

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

**No. 53**

WILLIAM EARL FIKES, PETITIONER,

*vs.*

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF STATE OF  
ALABAMA

## INDEX

	Original	Print
Record from the Circuit Court of Dallas County, Ala- bama	1	1
Caption (omitted in printing)	1	
Indictment	1	1
Arraignment	1	2
Special venire drawn and allowed	2	3
Motion to quash indictment	4	4
Motion to quash venire	10	8
Amendment to motion to quash venire	12	10
Judgment	13	11
Sentence	14	12
Given charges	15	13
Motion for a new trial	25	19
Judgment of the Court on motion for new trial	29	24
Transcript of testimony on motions	30	25
Appearances	30	25
Colloquy between Court and counsel	34	25
Testimony of Arthur Morrison Pitts—		
Direct	35	27
Cross	37	30
Redirect	38	31
Recross	40	33
Redirect	40	34
Recross	42	36

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUG. 27, 1956

Record from the Circuit Court of Dallas County, Ala-  
bama—Continued

Transcript of testimony on motions—Continued

Testimony of—Continued

	Original	Print
McLean Pitts—		
Direct	42	36
Cross	43	38
Thomas G. Gayle—		
Direct	44	39
Cross	45	40
Redirect	45	41
Recross	46	42
William B. Craig—		
Direct	47	43
Cross	47	44
M. Alston Keith—		
Direct	48	44
Cross	49	46
Harry W. Gamble—		
Direct	49	47
Cross	50	48
Royal Randolph Smith—		
Direct	50	48
Cross	51	49
Edgar A. Stewart—		
Direct	52	50
Cross	53	52
B. Valentine Hain—		
Direct	55	52
Cross	56	54
Chambliss Keith—		
Direct	56	54
Cross	57	55
John Randolph Smith—		
Direct	57	55
Cross	58	57
Redirect	58	57
Archie T. Reeves—		
Direct	58	58
Cross	60	60
Redirect	61	61
James A. Hare—		
Direct	61	61
Cross	63	64
Redirect	64	65
John P. Furniss—		
Direct	65	67
Cross	66	68
Redirect	67	69
Wallace Hill—		
Direct	68	70



## Record from the Circuit Court of Dallas County, Alabama—Continued

## Transcript of testimony on motions—Continued

## Testimony of—Continued

	Original	Print
C. C. Thomas—		
Direct	77	83
Cross	85	95
Kenneth M. Harper—		
Direct	87	97
Wallace Hill (recalled)—		
Direct	93	107
Cross	94	108
Redirect	97	113
Mrs. Pauline K. Barnes—		
Direct	101	114
Cross	102	115
Redirect	103	117
Recross	103	117
W. C. McCain—		
Direct	104	118
Cross	108	123
Redirect	109	125
Recross	110	127
s Kenneth M. Harper (recalled)—		
Direct	116	127
Cross	117	128
Recross	120	130
Redirect	120	131
Recross	122	132
C. D. Scott, 2nd—		
Direct	290	133
Wallace Hill (recalled)—		
Direct	311	137
Cross	334	155
Redirect	336	158
C. C. Thomas (recalled)—		
Cross	345	159
H. C. Reed (recalled)—		
Cross	346	160
Kenneth M. Harper (recalled)—		
Direct	348	161
Cross	357	165
Redirect	357	166
Recross	362	168
W. C. McCain (recalled)—		
Direct	367	169
Cross	375	170
Recross	388	174
Redirect	389	176
Mrs. Pauline K. Barnes (recalled)—		
Direct	409	177

Record from the Circuit Court of Dallas County, Ala-  
bama—Continued

	Original	Print
Transcript of testimony on jury trial	526	180
Colloquy between court and counsel	528	180
Testimony of Mrs. Jean Heinz Rockwell—		
Direct	531	181
J. Wilson Baker—		
Direct	553	188
Cross	557	194
Redirect	565	204
Cross	566	206
Redirect	569	209
Recross	569	210
Ed W. Mullen—		
Direct	575	218
Cross	575	219
Redirect	579	224
Cross	580	224
Redirect	580	225
Recross	580	225
J. Wilson Baker (recalled)—		
Direct	581	227
Cross	582	228
Redirect	583	229
Recross	583	229
State's Exhibit 3—Excerpt from tape recording of conversation between Captain J. Wilson Baker and the defendant	585	232
Testimony of J. Wilson Baker—		
Redirect	590	237
Cross	595	241
Redirect	603	250
Recross	606	255
Plaintiff's Exhibit 1—Confession of William E. Fikes	609	259
Testimony of Mrs. Deloris Stenson—		
Direct	617	263
Mrs. Claude Binford—		
Direct	626	264
Redirect	628	265
Recross	629	266
W. D. Bailey—		
Recross	631	266
Redirect	633	269
Recross	634	269
Redirect	634	270
Recross	634	270
Thomas H. Horne—		
Direct	640	271

# INDEX

v

## Record from the Circuit Court of Dallas County, Alabama—Continued

### Transcript of testimony on jury trial—Continued

#### Testimony of—Continued

	Original	Print
Brady Bamburg—		
Direct .....	657	275
Cross .....	662	278
Redirect .....	665	280
Dr. Willis Edgar Lewis—		
Direct .....	682	282
Cross .....	685	286
Dr. Gordon C. Looney —		
Direct .....	686	287
Cross .....	690	291
Dr. Alan P. Smith, Jr.—		
Direct .....	694	292
Willie Fikes—		
Direct .....	702	298
Cross .....	705	302
Redirect .....	706	304
Recross .....	707	305
Irene Fikes—		
Direct .....	708	306
Cross .....	709	307
Redirect .....	709	308
Mrs. Gladys Chambliss—		
Direct .....	724	309
Cross .....	727	312
Redirect .....	729	314
Recross .....	729	315
C. P. Burford—		
Direct .....	733	320
Cross .....	735	323
Defendant's Exhibit E—Newspaper article .....	738	327
Testimony of C. P. Burford—		
Cross .....	739	328
Redirect .....	744	331
Recross .....	744	331
Redirect .....	745	332
Recross .....	745	332
Colloquy .....	796	333
Verdict .....	796	333
Proceedings in the Supreme Court of Alabama .....	803	335
Assignment of errors .....	803	335
Opinion, per curiam .....	806	337
Opinion, concurring specially, Lawson, J. ....	820	337
Judgment of affirmance .....	821	353
Motion for rehearing .....	823	354
Order denying rehearing .....	826	354
Order extending time to file petition for writ of certiorari .....	833	355
Order granting motion for leave to proceed in forma pauperis and petition for writ of certiorari .....	835	355

[fol. 1]

[Caption omitted]

**IN CIRCUIT COURT OF DALLAS  
COUNTY, ALABAMA**

No. 8072

**THE STATE OF ALABAMA,**

**vs.**

**WILLIAM EARL FIKES**

**INDICTMENT—Filed November 12, 1953**

• • • • •  
The Grand Jury of said County charge that before the finding of this indictment William Earl Fikes did, in the nighttime, with intent to ravish, break into and enter the inhabited dwelling of Almon S. Rockwell which was occupied by Jean Heinz Rockwell, a person lodged therein.

Against the peace and dignity of the State of Alabama.

James A. Hare, Solicitor of 4th Circuit:

Grand Jury No. 43. The State of Alabama vs. William Earl Fikes; Charge: Burglary, 1st degree; No Prosecutor; Witnesses: Jean Heinz Rockwell, W. D. Bailey, J. W. Baker, W. M. Ware, W. L. Sowell, Auburn, Ala., C. P. Burford, Kilby.

A True Bill, John P. Furniss, Foreman of the Grand Jury.

[File endorsement omitted]

## IN CIRCUIT COURT OF DALLAS COUNTY, ALABAMA

## ARRAIGNMENT

The Defendant and his Attorneys, Peter A. Hall and Orzell Billingsley, Jr. being in open Court and defendant being duly and legally arraigned, pleads "Not Guilty," and not guilty by reason of insanity, whereupon it is ordered by the Court:

1. That Monday, the 7th day of December, 1953, be and the same is hereby set for the trial of this case.

2. That the Sheriff summon 3 Jurors for the trial of this case, including the regular 75 Jurors drawn for the week of the trial.

3. That the names of 3 Jurors be drawn from the Jury Box, who, together with the 75 regular Jurors drawn for the week in which this case is set for trial, shall be those [fol. 2] allowed for the trial of this case, and thereupon the Presiding Judge of said Court in open Court in the presence of the Defendant and his Attorney, in accordance with the law in such cases made and provided, drew from the Jury Box of Dallas County, Alabama, the names of 3 Jurors to complete the Venire fixed and allowed for the trial of this case.

4. That a list of all said Jurors, regular and special, together with a copy of the indictment be forthwith served on the Defendant by the Sheriff.

The names of the said 3 special jurors drawn for the trial of this case, are as follows, to-wit: 1. Eddie Hood, 2. Woodrow W. Long, 3. Robert K. Neville.



## IN CIRCUIT COURT OF DALLAS COUNTY, ALABAMA

[Title omitted]

## SPECIAL VENIRE DRAWN AND ALLOWED

No.	Name	Occupation	Res. Address	Bus. Address
1—	Arthur A. Pitts	RR Exp. Co.	632 Union	
2—	George E. Jones	County Engineer	902 Lauderdale	
3—	Edwin Browning	Farmer	Tyler	
4—	Thomas J. Smith	R. L. Zeigler	225 Alabama Ave.	
5—	H. C. Plummer	Farmer	Orrville	
6—	John T. Moore	Farmer	Burnsville	
7—	Al Smith	Farmer	Orrville	
8—	John Phillips	I. Lewis Cigar Co.	814 Lapsley	
9—	Willie Smith	Farmer	Sardis-Kings	
10—	Jesse H. Norris	Sou. R. R.	1907 Tremont	
11—	Clarence W. Eastep	Eastep-Haisten Realty Co.	711 Lapsley St.	
12—	Nat G. Rudolph	Postoffice	Rt. 2	
13—	John A. Lockett	Smith Auto Service	Alabama Ave.	
14—	Gordon A. Giraud	Selma Tire Service	2505 Water	
15—	John P. Pe	Rawls Machine Co.	1109 5th Ave.	
16—	Ralph Stoudenmire	Bartons	1901 Tremont	
17—	W. D. Powers	City National Bank	713 Pettus	
18—	Cecil C. Jackson	Jackson Clothing Co.	118 Union	
19—	Morgan Barnes	Mechanic	1500 Washington	
20—	Chester O. Porter, Jr.	I. Kayser & Co.	223 Hooker St.	
21—	J. Douglas Phillips	Stewart, King, & McKenzie	409 King Street	
22—	Carroll E. Jackson	Craig Field	201 Lamar St., Selma	
23—	Jack C. Brown	Grocer	313 Parkman	
24—	Clyde Pardue	Farmer	Summerfield	
25—	W. Drury Caine	Dairyman	618 Union	W. A. Cain & Son
26—	Davis R. Gamble	Selma National Bank		
27—	John Henry Roberts	Farmer	Browns	
28—	James Siegler	Cont. Pulpwood	Plantersville	
29—	Chester B. Rainwater	Sou. RR	1524 Broad	
30—	H. M. Story	Farmer	Montgomery Hiway	Montgy. Hiway
31—	N. Gillis Cammack		6 Union	Auto Parts Co.
32—	Robert Jones		629 Tremont	
33—	James L. Walsh		2100 Lauderdale	Selma Tin Shop
34—	William T. Whiten		Rt. 2	Sou. R. R.
35—	Young Childers	Farmer	Rt. 2, Box 274	Rt. 2, Box 214
36—	Vester R. McKinney, Sr.		219 Lapsley	Barber
37—	H. A. Waites		2911 Ala.	Hanna Mfg. Co.
38—	S. F. Hopkins	Salesman	Selmont	Texas Co.
39—	Earl C. Day	Mgr.	1836 Broad	Day Mtr. Supply Co.

[fol. 3]

No.	Name	Occupation	Res. Address	Bus. Address
40—	John Willey	Farmer	Rt. 3, Selma	Rt. 3, Selma
41—	Tyler Moore	Farmer	Burnsville	Burnsville
42—	Howard Smitherman		2713 Alabama	Sou. R. R.
43—	Tom Waller		513 Pettus	Dry Cleaner
44—	J. L. Tackett	Farmer	Harrells	
45—	Wm. K. Smith	Farmer	126 Mechanic	
46—	H. Sam Paisley		619 Alabama Ave.	Sou. R. R.
47—	Charlie Rascoe, Jr.	Farmer	Harrells	
48—	Alex F. Farris, Jr.		11 Cedar Dr.	Sou. R. R.
49—	Donald M. Russell		716 Dallas	Pattillo & Russell
50—	Rexford A. Watson		26 BL NBF Homes	Boston Bargain Store
51—	Douglas Harris	Farmer	Rt. 1, Selma	Rt. 1, Selma
52—	R. D. Browning, Jr.	Farmer	Pleasant Hill	Pleasant Hill
53—	Osburn L. Green (Jack)		408 Tremont	Ames Bag Co.
54—	Crawford E. Cochrane		33 Water	City Produce Co.
55—	Sam W. Lumpkin		802 7th Ave.	Sears, Roebuck & Co.
56—	James Ryall		802 7th Ave.	Ryall Dist. Co.
57—	Lucien M. Rountree	Electrician	801 Pettus	
58—	Leonard C. Murphy		Lakeview Ave.	Mott & Murphy
59—	Wm. H. Plant, Jr.		Dallas Ave.	Selma Stat. Co.
60—	G. R. Rentz, Jr.	Farmer	Marion Jet.	Marion Jet.
61—	Perey G. Wood		627 Ala.	Insurance
62—	Hinton Moore	Farmer	Marion Jet.	Marion Jet.
63—	James D. McCutcheon		1112 Primrose	Miller & Co.
64—	George J. Harrison	Pers. Dir.	NBF Homes	Craig Field
65—	Jerome E. Siegel, Jr.	Finance Co.	Houston Pk.	Commercial Sec. Co.
66—	Richard McCain			McCain Dairy
67—	J. Lewis Hadaway		145 Water	Nesbitt Bottling Co.
68—	W. E. McCullough		601 Tremont	Driggers Mtr. Co.
69—	Cecil O. Lench, Jr.		7 Young St.	Hohenberg Bros.
70—	Wilson W. Hughes		Young St.	Standard Glass Co.
71—	Washington Goodwin		407 Bluff St.	Valley Creek Stables
72—	J. Otis Hicks		903 3rd Ave.	Cloverleaf Creamery
73—	Walker O. Hooks		2223 Ala.	Sou. R. R.
74—	M. Woods Culpepper	Logger	Rt. 1, Selma	Rt. 1, Salem
75—	James P. Dattillo		1215 5th Ave.	Sou. R. R.

[fol. 4] IN CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

MOTION TO QUASH INDICTMENT—Filed November 19, 1953

Now comes the defendant, William Earl Fikes, and respectfully moves this Honorable Court to quash the indictments returned in the above causes and to hold the

same for naught; and in support of said Motion alleges the following, to-wit:

1. For that defendant is a member of the Negro race and a citizen of the State of Alabama, and of the United States of America, and was at the time the Grand jury of Dallas County, Alabama returned the indictments in the above cause on to-wit, the 12th day of November, 1953, and for many years prior thereto, and at the present time, Negroes were, and are systematically excluded from Grand Juries organized in said County and State, solely because of their race or color; or are discriminated against in the organization of Grand Juries in said County of said State solely because of their race or color in that no members of said race, or a mere token number, are included on the jury roll or have their names placed in the jury box; or if such names are placed on the jury roll or in the jury box, they are not drawn for service on any Grand Jury; or if they are drawn, they are not listed, thereby denying to defendant due process, and equal protection of the laws guaranteed him by the Constitution and laws of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America.

2. Defendant avers that no Negro served on the Grand Jury which returned the aforesaid indictments against him in this cause, nor has any Negro served on a Dallas County, Alabama Grand Jury in modern times.

3. Defendant avers the existence of a system, or practice, or custom, in the drawing or organization of Grand Juries to serve in Dallas County, Alabama, designed to totally exclude Negroes from service on such Grand Juries, or to discriminate against Negroes solely on account of their race or color, contrary to the Constitution and Laws of the State of Alabama, and the Fourteenth Amendment to the United States Constitution.

4. Defendant avers that at the time the Grand Jury returned the indictments in the above cause, according to the 17th Decennial Census of the United States, its Territories and possessions for 1950, published by the United States Department of Commerce, Bureau of the Census, of which the Courts of Alabama take judicial notice, the white male population of Dallas County, Alabama,

between the ages of twenty and sixty-four years, numbered 5583, and that the Negro male population of said County between the ages of twenty and sixty-four years numbered 6772, and further that the total white male population of said County over the age of twenty years numbered 6200, and the total Negro male population of said County over the age of twenty years numbered 8200; and defendant avers further that the great majority of the aforesaid Negro males are native born citizens of Dallas County, Alabama, householders and freeholders in said County and State, generally reputed to be honest and intelligent men, esteemed in the community for their integrity [fol. 5] and good character and that they are not habitual drunkards nor afflicted with disease or physical weakness as would disqualify them to discharge the duties of grand jurors, and that they otherwise possess all of the qualifications and none of the disqualifications set out in the Constitution and Laws of the State of Alabama and the United States which govern the selection and service of Grand Jurors, yet the jury commission failed or refused to place on the jury roll and in the jury box the names of such Negro male citizens of Dallas County, Alabama and that at the time of said indictment and at the present time, the jury roll of said County contains less than two per cent of the names of the total number of Negro males eligible, under the Constitution and laws of the State of Alabama, and of the United States, for jury duty in said County. Defendant avers further that the method of selection of the names of Negroes to be placed on the jury roll and in the jury box of Dallas County, Alabama, by the jury commission, is highly irregular and arbitrary and contrary to the method prescribed by the Constitution and laws of the State of Alabama, and of the United States, thereby depriving defendant of rights guaranteed him by the Constitution and laws of the said State of Alabama, and by the Constitution of the United States of America, especially the Fourteenth Amendment to the Constitution of the United States, guaranteeing to defendant due process of law and the equal protection of the laws, and said indictments are void.

5. Defendant avers that members of the Negro race are,



solely because of their race or color, arbitrarily, intentionally and systematically excluded in the selection of persons for Grand Jury duty, in that the great majority of those qualified for service in Dallas County, Alabama, are not included on the jury roll, or if included on said roll, their names are left out of the jury box, or if put in the box and drawn, they are not listed for service, and that because of the aforesaid practices, no Negro has served on a Grand Jury in Dallas County, Alabama since the days of reconstruction, or certainly not in modern times, and defendant avers that the Grand Jury which returned the aforesaid indictment against him was organized according to and in keeping with the aforesaid practice, thereby depriving defendant of the due process and equal protection of the laws, guaranteed to him by the Constitution and laws of the State of Alabama, and the Constitution of the United States of America.

6. Defendant avers that he was indicted by a Grand Jury of Dallas County, Alabama, on to-wit the 2nd day of June, 1953, for the same alleged offenses considered by the present Grand Jury; that on the 28th day of September, 1953, in case No. 8009 he filed his motion in this Honorable Court to quash one of said indictments, and as grounds for said motion alleged irregularities in the organization of the said Grand Jury, and denial of due process and equal protection of the laws guaranteed defendant by the Constitution and laws of the State of Alabama, and the Constitution of the United States; that after a hearing of the said Motion, this Honorable Court, on to-wit, the 9th day of October, 1953, granted the said Motion and quashed the said indictments; and defendant avers that the present [fols. 6-9] Grand Jury, which returned the indictment herein, against defendant, was organized according to the same, or substantially the same, arbitrary, irregular unlawful and unconstitutional methods, rules, customs and practices alleged and proved on the hearing of the aforesaid motion, and that if said indictment is allowed to stand, he will be deprived of his rights as guaranteed by the Constitution and Laws of the State of Alabama, and the Fourteenth Amendment to the Constitution of the United States of America.



Wherefore, the defendant prays that this Court will take notice of this, his motion to quash the indictments in the abovesaid causes, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said Motion.

William Earl Fikes, Defendant.

---

*Duly sworn to by William Earl Fikes. Jurat omitted in printing.*

---

[File endorsement omitted]

---

[fol. 10] IN CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

MOTION TO QUASH VENIRE—Filed November 19, 1953

To the Honorable Court:

Comes now the defendant, William Earl Fikes, by his attorneys, Peter A. Hall and Orzell Billingsley, Jr., and makes this his Motion to Quash the venire or array drawn on to-wit the 17th day of October, 1953, and in support of said motion alleges the following:

1. The defendant is a member of the Negro race.
2. Members of the Negro race, otherwise qualified to serve have been systematically excluded from service on the aforesaid jury or discriminated against in the organization of said jury, in that no members of the Negro race have been drawn for service thereon, that there is no probability of them actually trying or participating in the trial of this, or any other cause.
3. Defendant avers the existence of a system or practice in the drawing or organization of juries to serve in Dallas County, Alabama, deliberately designed to discriminate against members of the Negro race in order to prevent them from serving on juries by either excluding them

from the venire altogether or by keeping the number included so small that they can be systematically and uniformly struck from the venire and prevented from serving in the trial of any case.

4. Defendant avers that the 17th Decennial Census of the population of the United States, its Territories and Possessions for the year 1950, published by the United States Department of Commerce, Bureau of the Census, of which the Courts of Alabama take judicial notice, states that the white male population of Dallas County, Alabama, between the ages of twenty and sixty-four years, numbers 5583, and that the Negro male population of said County in said age group numbers 6772, and further that the total white male population of said County over the age of twenty years numbers 6200 and that total - male population of said County over the age of twenty years numbers 8200; and the defendant avers that notwithstanding the fact that the Negro male population over the age of twenty years exceeds the total white male population within the said age group by two thousand (2000) men, since the year 1950, and before, and continuing to this date, there has been a uniform practice by the jury commission for Dallas County, Alabama, of discriminating against prospective Negro jurors solely because of their race or color, either by leaving their names off the jury roll or by not including their names in the jury box from which the venire is drawn, so as to keep the number of Negroes actually summoned for jury duty at a token amount.

5. Defendant further avers that members of the Negro race are, solely because of their race and color, arbitrarily, intentionally and systematically excluded from jury service or discriminated against in the selection of persons for jury duty in that the great majority of those qualified to serve in Dallas County, Alabama, are not included on the [fol. 11] jury rolls, or their names are left out of the jury box, or, if drawn are not listed for service so that only a mere token number can ever serve; and defendant avers that the venire drawn on to-wit the 17th day of November, 1953, was selected in keeping with this practice and that unless this Honorable Court grants this his Motion to Quash the said venire he will be denied his constitutional right of equal protection under the laws.

Wherefore, the defendant prays that this Court will take notice of this his Motion to Quash the Venire in this cause, and that your Honor will, after consideration of the evidence and proof which the defendant offers to make, grant said Motion.

Respectfully made this 19th day of November, 1953.

Peter A. Hall, Orzell Billingsley, Jr.

*Duly sworn to by Peter A. Hall and Orzell Billingsley, Jr.  
Jurats omitted in printing.*

P. K. Barnes, Circuit Clerk, Notary Public.

[File endorsement omitted]

[fol. 12] IN CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

AMENDMENT TO MOTION TO QUASH VENIRE

To the Honorable Court:

Comes now the defendant, William Earl Fikes, through his attorneys, Peter A. Hall and Orzell Billingsley, Jr., and with leave of the Court first had and obtained and amends his Motion to Quash venire by substituting for paragraph four (4) of said Motion, the following:

4. Defendant avers that the 17th Decennial Census of the population of the United States, its Territories and Possessions for the year 1950, published by the United States Department of Commerce, Bureau of the Census, of which the Courts of Alabama take judicial notice, and states that the male population of Dallas County, Alabama of the ages of twenty-one and over numbers 13,996 and that the white male population of Dallas County in said age

group numbers 6,040, and that the Negro male population of said County in said age group numbers 7,956, and that the white male population of Dallas County, Alabama, between the ages of twenty and sixty-four years, numbers 5583, and that the Negro male population of said County in said age group numbers 6772, and further that the total white male population of said County over the age of twenty years numbers 6200 and that total male population of said County over the age of twenty years numbers 8200; and the defendant avers that notwithstanding the fact that Negro male population over the age of twenty-one years exceeds the total white male population within the said age group by one thousand nine hundred and sixteen (1,916) men, since the year 1950, and before, and continuing to this date, there has been a uniform practice by the jury commission for Dallas County, Alabama, of discriminating against prospective Negro jurors solely because of their race or color, either by leaving their names off the jury roll or by not including their names in the jury box from which the venire is drawn, so as to keep the number of Negroes actually summoned for Jury duty at a token amount.

Peter A. Hall, Orzell Billingsley, Jr./Attorneys for  
Defendants.

[fol. 13] IN CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

JUDGMENT—December 9th, 1953

Came the State of Alabama by its Solicitor and the defendant, William Earl Fikes, in his own proper person and by and with his attorneys, and being arraigned in open Court upon the indictment in this case, the defendant pleaded "Not Guilty", and issue being joined:

Thereupon came a jury of twelve good and lawful men, to-wit:

1—Wm. K. Smith, 2—Carroll E. Jackson, 3—H. A. Waites, 4—Wilson W. Hughes, 5—J. Douglas Phillips, 6—



Davis R. Gamble, 7—J. Otis Hicks, 8—John P. Peake, 9—S. F. Hopkins, 10—James Ryall, 11—Douglas Harris, 12—Eddie Hood,

who having been elected and duly sworn according to law on their oaths say, "We, the Jury, find the defendant guilty of Burglary in the First Degree, as charged in the indictment and fix his punishment at Death."

It is therefore considered and adjudged by the Court that the defendant is guilty of Burglary in the First Degree, as charged in the indictment.

---

[fol. 14] . IN CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

SENTENCE—December 10, 1953

And now on this day, to-wit: December 10th, 1953, the Defendant, William Earl Fikes, being again present in open Court in his own proper person and with his said Attorneys, and being asked by the Court if he has anything to say why the sentence of the law should not now be pronounced upon him, says nothing.

It is therefore adjudged and considered by the Court, and it is the order, sentence and judgment of the Court, that the defendant at the Bar, the said William Earl Fikes, as a punishment for this offense of which he has been convicted by the jury, and of which he has been adjudged guilty by the Court, be put to death at any hour on Friday the 5th day of March, 1954, by electrocution, at the place, in the manner and mode required by law, and that this sentence of death be executed by the proper person, designated by law to execute the sentence of death upon convicts, by causing to pass through the body of the defendant a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of said defendant until the defendant is dead.

And before passing sentence the Court proceeded to ascertain by examination of the defendant under oath, and other evidence, that the defendant is of the negro race,



male sex, is by way of occupation a service station laborer, that he is about 27 years of age and that his health is good.

The Defendant, William Earl Fike, having reserved questions of law for the consideration of the Supreme Court of the State of Alabama, and having taken an appeal to the Supreme Court of the State of Alabama from said judgment and sentence, and the defendant desiring the execution of said sentence suspended pending said appeal, it is therefore ordered by the Court that said appeal to the Supreme Court of the State of Alabama be granted and allowed to the defendant, and it is further ordered by the Court that the execution of said sentence be, and the same is hereby suspended to await the action of the Supreme Court of the State of Alabama on the appeal in this case.

(Signed) W. E. Callen, Judge.

[fol. 15] IN CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

GIVEN CHARGES

At the request of the defendant, the Court gave to the Jury the following written charges, to-wit:

1—The Court charges the Jury that the defendant enters into this trial with a presumption of innocence, and this is a fact in the case, which must be considered with all the evidence, and should not be disregarded.

Endorsed: "Given, W. E. Callen, Judge."

2—I charge you, Gentlemen of the Jury, that you should acquit the defendant if you believe that a person other than the accused was guilty of the crime charged, or if you have a reasonable doubt as to such fact.

Endorsed: "Given, W. E. Callen, Judge."

3—I charge you, Gentlemen of the Jury, that the accused in this case is presumed to be innocent until proven guilty beyond a reasonable doubt, and if after considering the evidence there is reasonable doubt of his guilt, then you can not find him guilty.

Endorsed: "Given, W. E. Callen, Judge."

4—I charge you, Gentlemen of the Jury, that the Court in admitting in evidence the alleged confession of the accused did not deprive you of your right to carefully weigh all facts surrounding the confession and deciding whether or not you are satisfied beyond a reasonable doubt that the confession was in fact voluntarily made.

Endorsed: "Given, W. E. Callen, Judge."

5—I charge you, Gentlemen of the Jury, that if from the evidence in this case you are satisfied beyond a reasonable doubt that the accused, even though he may have been able to distinguish right from wrong, was so afflicted with a diseased mind that by reason of the duress of such mental disease, he was moved by an irresistible impulse to commit the act charged, then you must find him not guilty by reason of insanity.

Endorsed: "Given, W. E. Callen, Judge."

7—I charge you, Gentlemen of the Jury, that a reasonable doubt may be defined as a doubt which leaves the minds of the jurors wavering, unsettled, and unable to come to a conclusion as to the truth, or to a conclusion satisfactory to them, and if after hearing the evidence in this case there is such a doubt in your minds, you can not find the defendant guilty.

Endorsed: "Given, W. E. Callen, Judge."

8—I charge you, Gentlemen of the Jury, that reasonable doubt exists where a juror hesitates between two conclusions, and then, after considering the evidence from all [fol. 16] angles, is reluctant to conclude which of two conclusions is correct.

Endorsed: "Given, W. E. Callen, Judge."

9—I charge you, Gentlemen of the Jury, that you can not find the accused guilty unless you believe him guilty beyond a reasonable doubt. A mere suspicion that he may be guilty is not enough to justify conviction.

Endorsed: "Given, W. E. Callen, Judge."

10—I charge you, Gentlemen of the Jury, that if after careful consideration of all facts surrounding the confession of the accused admitted in evidence in this case, as revealed by the evidence, you believe beyond a reasonable doubt that the confession was not voluntarily made, then you may determine that the facts confessed to are untrue

and not entitled to any weight if you believe beyond a reasonable doubt that such facts are untrue.

Endorsed: "Given, W. E. Callen, Judge."

11—I charge you, Gentlemen of the Jury, that in deciding whether or not a confession should be admitted in evidence, the Court passes upon the facts merely for the purpose of determining their competency and admissibility for your consideration. It is for the Jury alone to decide whether or not the facts contained in the confession are true and entitled to any weight.

Endorsed: "Given, W. E. Callen, Judge."

13—I charge you, Gentlemen of the Jury, if upon considering all of the evidence in this case, you have a reasonable doubt of the defendant's guilt arising out of any part of the evidence, it is your duty to find him not guilty.

Endorsed: "Given, W. E. Callen, Judge."

15—The Court charges the jury that the burden is on the state to convince you of the defendant's guilt to the exclusion of every reasonable doubt, and by evidence that overcomes the presumption of facts, that the law surrounds the defendant with, that he is innocent of crime.

Endorsed: "Given, W. E. Callen, Judge."

16—I charge you, Gentlemen of the Jury, that from the evidence in the case you believe beyond a reasonable doubt that the defendant was in fact afraid that he suffer personal violence at the hands of the Officers of the Law if he refused to sign the confession tendered him, and that the fear was so real that he would have signed any statement whether true or not in order to escape the feared violence, then the confession was not voluntarily made, and you may reject it as untrue, unless you believe beyond a reasonable doubt that the facts confessed to are in fact true.

Endorsed: "Given, W. E. Callen, Judge."

17—I charge you Gentlemen of the Jury, that the court in admitting confession of the accused in evidence was in no way inferring that the evidence was in any way conclusive that the confession was in fact voluntarily made. The [fol. 17] confession, even though permitted by the Court to be placed in evidence, is subject to scrutiny by the Jury, and if from all the evidence in this case the Jury concludes that the confession was in fact not voluntarily made, you

should disregard it and give it no weight in arriving at your verdict.

Endorsed: "Given, W. E. Callen, Judge."

18—I charge you, Gentlemen of the Jury, that Title 15, Section 160 of the 1940 Code of Alabama reads as follows: It is the duty of any private person having arrested another for the commission of any public offense, to take him without unnecessary delay before a magistrate, or to deliver him to some one of the officers specified in Section 152 on this title, who must forthwith take him before a magistrate, this, Gentlemen of the Jury, I charge you is the law of the State of Alabama and is mandatory.

Endorsed: "Given, W. E. Callen, Judge."

19—I charge you, Gentlemen of the Jury, that if from the evidence in this case you are satisfied beyond a reasonable doubt that the defendant was afflicted with a diseased mind to the extent that (1) he did not know right from wrong, as applied to the particular act in question, or (2) if he did have such knowledge, he, nevertheless, by reason of the duress of such mental disease had so far lost the power to select the right and to avoid the act in question as his free agency was at the time destroyed, and (3) that, at the same time the crime was so connected with such mental disease in relation of cause and effect, as to have been the product of it solely, then you must find the defendant not guilty by reason of insanity.

Endorsed: "Given, W. E. Callen, Judge."

20—The Court charges the Jury that if the evidence, or any part thereof, after a consideration of the whole of such evidence, generates a well founded doubt of defendant's guilt, the Jury must acquit him.

Endorsed: "Given, W. E. Callen, Judge."

21—I charge you, Gentlemen of the Jury, that if from the evidence in this case, you believe beyond a reasonable doubt that the defendant in fact did not read the alleged confession, or know what it contained, then you will be justified in having a reasonable doubt as to whether or not he in fact confessed to the offense charged, and whether or not the facts confessed to are true, unless other evidence in the case convinces you beyond a reasonable doubt that they are true.

Endorsed: "Given, W. E. Callen, Judge."



22—I charge you, Gentlemen of the Jury, that a confession is voluntary in law only when it was in fact voluntarily made. The mere fact that it was not induced by any promise or threat will not necessarily render it voluntary, since a confession may be involuntary if the circumstances, [fol. 18] irrespective of their nature, are such as made it the result of the subjection of the will of the confessor to that of another.

Endorsed: "Given, W. E. Callen, Judge."

23—The Court charges the Jury that they must find the defendant not guilty of the conduct of the defendant upon a reasonable hypothesis is consistent with his innocence.

Endorsed: "Given, W. E. Callen, Judge."

24—The Court charges the Jury that the only foundation for a verdict of guilty in this case is that the entire jury shall believe from the evidence beyond a reasonable doubt and to a moral certainty, that the defendant is guilty as charged in the indictment, to the exclusion of every probability of his innocence, and every reasonable doubt of his guilt, and if the prosecution has failed to furnish such measure of proof, and to so impress the minds of the Jury of his guilt, they should find him not guilty.

Endorsed: "Given, W. E. Callen, Judge."

25—The Court charges the Jury that if the defendant has offered evidence explaining the alleged confession in this case, and if that evidence, when considered with the other evidence in this case, has generated in the minds of the jury a reasonable doubt as to whether defendant is guilty as charged in the indictment, then the jury should acquit the defendant.

Endorsed: "Given, W. E. Callen, Judge."

26—The Court charges the Jury that before they can convict the defendant, the evidence must be so strong as to convince each juror of his guilt beyond a reasonable doubt; and if, after considering all of the evidence, a single juror has a reasonable doubt of the defendant's guilt, arising out of any part of the evidence, then they can not convict him.

Endorsed: "Given, W. E. Callen, Judge."



27—I charge you, Gentlemen of the Jury, that the legal test of insanity in Alabama which will justify a verdict of not guilty by reason of insanity is that at the time of the commission of the offenses the accused was afflicted with a diseased mind to the extent that (1) he did not know right from wrong at the time of the particular act in question (2) if he did have such knowledge, he, nevertheless, by reason of the duress of such mental disease had so far lost the power to select the right and to avoid doing the act in question as his free agency was at the time destroyed, and (3) that, at the same time, the crime was so connected with such mental disease and the relation of cause and effect as to have been the product of it solely.

Endorsed: "Given, W. E. Callen, Judge."

[fol. 19] 28—I charge you, Gentlemen of the Jury, that a reasonable doubt as to the guilt of the accused will exist if, after the entire evidence has been compared and considered by you, you do not have an abiding conviction, or an abiding conviction to a moral certainty, of the truth of the charge against the accused, and if such reasonable doubt does exist, you can not find the accused guilty.

Endorsed: "Given, W. E. Callen, Judge."

29—The burden is upon the State and it is the duty of the State to show beyond a reasonable doubt and to the exclusion of every reasonable hypothesis, every circumstance necessary to show that the defendant is guilty, and unless the State has done that in this case, it is your duty, Gentlemen of the Jury, to render a verdict of not guilty.

Endorsed: "Given, W. E. Callen, Judge."

30—The Court charges the Jury that if the Jury would not be willing to act on the evidence in this case, as if it were in relation to matters of the most solemn importance to their own interest, they must acquit the defendant.

Endorsed: "Given, W. E. Callen, Judge."

32—The Court charges the Jury that if, after considering all the evidence in this case you have a reasonable doubt of the guilt of the defendant of the charges presented in the indictment in this case, you should acquit the defendant.

Endorsed: "Given, W. E. Callen, Judge."

33—The Court charges the Jury that if in considering all of the evidence in this cause, that tending to show guilt together with that tending to show innocence, there should spring up in the minds of the Jury from any part of the evidence a probability of the innocence of the defendant, the Jury should acquit.

Endorsed: "Given, W. E. Callen, Judge."

34—The Court charges the Jury that unless each member of the Jury is convinced beyond a reasonable doubt from the evidence in the case of the guilt of the defendant, then you should not convict the defendant.

Endorsed: "Given, W. E. Callen, Judge."

35—The Court charges the Jury that the legal presumption of innocence is to be regarded by the Jury in every case as a matter of evidence to the benefit of which the accused is entitled, and as a matter of evidence, it accompanies the accused, unless and until the other evidence has convinced the Jury beyond a reasonable doubt of the guilt of the accused.

Endorsed: "Given, W. E. Callen, Judge."

36—The Court charges the Jury that a person charged with a felony should not be convicted unless the evidence excludes every reasonable hypothesis but that of his guilt; no matter how strong the circumstances are, they do not come up to the full measure of proof which the law requires [fols. 20-24] if they can be reasonably reconciled with the theory that the defendant is innocent.

Endorsed: "Given, W. E. Callen, Judge."

---

[fol. 25] IN CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

MOTION FOR A NEW TRIAL—Filed January 7, 1954

Now comes the defendant, William Earl Fikes, and moves this Honorable Court to set aside the verdict and judgment rendered against said defendant on to-wit the 9th day of December, 1953, and that this Honorable Court will

grant the said defendant a new trial, and as grounds for said Motion, sets out and assigns the following:

1. That the verdict returned by the jury in the case is contrary to the law.

2. That the verdict returned by the jury is contrary to the facts.

3. For that the judgment of the court is contrary to the law in the case.

4. In that the verdict of the jury is not sustained by the great preponderance of the evidence in the case.

5. For that the judgment of the court is not sustained by the great preponderance of the evidence in the case.

6. In that the verdict of the jury is based on bias, prejudice and passion against the defendant.

7. For that the court erred in over-ruling objections of the defendant to the introduction of evidence offered on behalf of the State of Alabama.

8. For that the Court erred in over-ruling objections by the defendant to evidence offered on behalf of the State of Alabama, which so biased and prejudiced the jury that the defendant was denied the right of a fair and impartial trial.

9. For that the court erred in denying defendant's Motion to declare void and illegal the petit jury drawn to try defendant in this cause, in that there were no Negroes serving on said petit jury.

10. For that the court erred in denying defendant's motion to quash the venire or array drawn to try defendant in this cause, on the grounds that members of the Negro race, otherwise qualified to serve on juries in Dallas County, Alabama, have been systematically excluded from service on aforesaid jury or discriminated against in the organization of said jury in that no members of the Negro race have been drawn for service thereon, that there is no probability of their actually trying or participating in the trial of this, or any other cause, thereby denying to the defendant in this cause a fair and impartial trial in violation of the Constitution of the State of Alabama and the Fourteenth Amendment to the United States Constitution.

11. That the court erred in denying defendant's motion to Quash the venire or array drawn to try defendant in

this cause, in spite of the prevailing and great preponderance of the evidence offered by the defendant to show that no Negro had ever served on a jury in Dallas County, Alabama, in modern times and that members of the Negro race are solely, on account of their race and color, arbitrarily, intentionally, and systematically excluded from jury service or discriminated against in the selection of [fol. 26] persons for jury duty in that the great majority of those qualified to serve in Dallas County, Alabama, are not included in the jury rolls, or their names are left out of the jury box, or if drawn, are not listed for service so that only a mere token number can ever be called for jury duty and defendant proved that the venire drawn on to-wit, the 17th day of November, 1953, to try this defendant, was selected in keeping with this practice.

12. That the Court erred in denying defendant's Motion to Quash Indictment returned against defendant in this cause, in that no Negro served on the grand jury which returned aforesaid indictment against defendant in this cause and in the face of unchallenged and the great preponderance of the evidence presented to show that no Negro had ever served on a Dallas County, Alabama Grand jury in modern times.

13. For that the Court erred in denying defendant's Motion to Quash Venire and Motion to Quash Indictment returned against the defendant on the grounds that Negroes qualified for jury service in Dallas County, Alabama, are arbitrarily, systematically and intentionally excluded from jury duty and in the face of unchallenged and the great preponderance of the evidence that the presently constituted jury roll of Dallas County, Alabama, compiled in October, 1953, contains only 1,763 (13%) names of male citizens over the age of twenty one years, and of a total population of 13,996 according to the 17th Decennial Census of the United States, its territories and possessions for 1950, published by the United States Department of Commerce, Bureau of the Census, and of said number and said census 6,040 are white male citizens and 7,956 are white male citizens.

14. For that the Court erred in denying defendant's Motion to Quash Venire and Motion to Quash Indictment



in the face of unchallenged and a great preponderance of the evidence and there were only 13% of the entire male population over the age of twenty-one years listed on the jury roll, of which percentage there were only 3% of the Negro male citizens and 25% of white male citizens of said age ground, all in violation of the Constitution of the State of Alabama, the Alabama Code of 1940 and Supplements thereto and the Constitution of the United States of America.

15. For that the Court erred in denying defendant's Motion to Quash Venire and Motion to Quash Indictment in the face of unchallenged and prevailing evidence that the jury commission of Dallas County, Alabama, had continually and consistently violated the provisions as set out in the Code of Alabama and Supplements thereto, Title 30, Chapter 2, in pursuance of their duties in compiling jury lists, jury rolls, cards and boxes.

16. That the Court erred in denying defendant's Motion to Quash Indictment returned against defendant in this cause on the ground that the only thing before said Grand Jury which returned said indictment was an alleged confession purported to have been given by the defendant, [fol. 27] which was extorted and illegally obtained from him by and through force and violence or threats of force and violence, coercion, torture and brutality by officers and detectives of the City of Selma, and of Dallas County, Alabama, and the State of Alabama, while defendant was held illegally.

17. For that the Court erred in failing to exclude an alleged confession purported to have been given by the defendant on a tape recording machine, which was presented for no other purpose then to arouse the passion and prejudice of the jury; said Honorable Court having permitted said confession to go to the jury over the strenuous objections of the defendant, to which defendant's counsel duly and legally reserved an exception to the ruling of the Court.

18. For that the Court erred in failing to exclude an alleged type written confession, purported to have been given by the defendant for which no proper predicate was laid by the State of Alabama, and which was offered for



no other purpose than to arouse the passion and prejudice of the jury; said Honorable Court having permitted said confession to go to the jury over the strenuous objections of the defendant, to which defendant's counsel duly and legally reserved an exception to the ruling of the Court.

19. For that the court erred in allowing or permitting Mrs. Delores Stinson to testify with reference to an alleged rape allegedly committed by defendant at sometime previous to the time of the burglary for which defendant was tried over defendant's objections.

20. The Court erred in allowing Mrs. Delores Stinson to testify with reference to an alleged rape for which defendant had been tried and sentenced, over defendant's objections.

21. The Court erred in allowing Mrs. Delores Stinson to testify that defendant had had sexual intercourse with her.

22. For that the court erred in allowing or permitting Mrs. Claude Binford to testify over defendant's objections to an alleged burglary of her premises by defendant, which was not connected in any way with the crime for which he was being tried.

23. For that the Court erred in allowing the testimony of James Winfred Brown, to go to the jury over defendant's strenuous objections.

24. For that the Court erred in not allowing defendant to testify with reference to whether or not the alleged confessions were voluntary.

25. For that the Court erred in admitting into evidence over defendant's objections, State's Exhibit No. 2, without proper identification and without a proper predicate having been laid.

26. The Court erred in admitting into evidence over defendant's objections a certain butcher knife marked for identification as State's Exhibit No. 2.

[fol. 28] 27. For that the Court erred in overruling Defendant's several objections throughout the hearing of this cause, to which ruling the defendant reserved proper exceptions.

28. For that the Court erred in allowing witnesses for the State to remain within the Court room during the

hearing of this cause, when said witnesses were under the rule.

29. The Court erred in allowing Dr. Norman H. Rein to testify as an expert for the State, over defendant's objections.

30. For that the Court erred in admitting the testimony of Dr. Norman H. Rein over defendant's objections.

Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Defendant.

[File endorsement omitted]

---

[fol. 29] IN CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

JUDGMENT OF THE COURT ON MOTION FOR NEW TRIAL—  
January 28, 1954

January 28, 1954. This being the date heretofore set for the hearing of the Motion filed in this cause by Counsel for defendant asking and moving that the verdict of the jury and the judgment rendered thereon be set aside and a new trial granted defendant. Counsel for defendant having appeared in person and argued their motion and the thirty (30) grounds set out and embodied therein and the State of Alabama appearing by the Circuit and Dallas County Solicitors and Hon. T. G. Gayle, as Special Counsel, and the arguments for and against said Motion having been heard by the Court; the various grounds as set out in said Motion and every aspect contained in said Motion and the same being considered and carefully studied by the Court, the Court is of the opinion that the Motion of defendant seeking to set aside the verdict of the jury and the judgment rendered thereon and to grant a new trial is not well taken and should be denied. It is therefore ordered, adjudged and decreed that the Motion of defendant requesting the setting aside of the verdict of the jury, the judgment rendered thereon and to grant defendant a new trial be and the same is hereby denied and overruled to

which action on the part of the Court counsel for defendant do except in open Court.

Done In Term Time this the 28th day of January, 1954.

W. E. Callen, Judge.

[fols. 30-33] IN THE CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

[Title omitted]

Charge: Burglary, First Degree—Three Motions

Selma, Alabama

Transcript of Testimony on Motions—November 30, 1953  
December 1-5, 1953

Before: Hon. W. E. Callen, Trial Judge.

#### APPEARANCES:

Hon. James A. Hare, Circuit Solicitor.

Hon. Henry F. Reese, County Solicitor.

Hon. Thomas G. Gayle, Special Prosecutor of counsel,  
Attorneys for the State.

Hon. Peter A. Hall.

Hon. Orzell Billingsley, Jr., of counsel, Attorneys for  
the Defendant.

[fol. 34] (Witnesses sworn and rule invoked. All witnesses, except officers of the Court, leave the court room.)

#### COLLOQUY BETWEEN COURT AND COUNSEL

Attorney Hall: As attorneys for William Earl Fikes, we have urged three grounds why the indictment returned against him by a recent grand jury should be quashed. Two of these grounds we have argued before: one is a motion to quash because of the construction of the grand jury, on the ground that negroes are systematically excluded because of race and color, and because of that the

defendant was denied due process and equal protection of law as guaranteed by the laws and constitution of the State of Alabama and the Fourteenth Amendment of the constitution of the United States; the second motion which we have argued to some extent is the motion to quash the venire, on the same grounds more or less as the previous motion. The third motion is a motion to quash on the grounds the grand jury which returned the indictment against Fikes didn't have sufficient evidence before it on which to base a true bill. All they had before them was an alleged confession which had been extorted from him. That this defendant had been picked up by drag-net method, rushed to the city or county jail, never taken before a magistrate, constantly questioned and threatened, rushed from there to Kilby Prison, never given a preliminary trial, and finally by unorthodox methods what purported to be a confession was extorted from him. And this was all that the grand jury had in its consideration of this man's indictment. On this ground we urge that he was denied due process of law, equal protection of law as guaranteed by the laws of the State of Alabama and by the constitution of said State, and equal protection of law and due process of law as guaranteed by the Fourteenth Amendment of the constitution of the United States. We urge this Court to quash the aforesaid indictment on the grounds mentioned, and with the Court's permission we would like to take testimony on the first two motions. First, on the motion to quash the indictment returned by the grand jury, because of the exclusion of negroes from the grand jury.

The Court: The Court denies all three motions.

Attorney Hall: We would like to take them that way.

The Court: I don't see why there is anything to be gained [fol. 35] by not combining them or why it would put you to or in any awkward position. There can't be many witnesses in that third, if you want to take the first two together.

Attorney Hall: We will take the third last.

Solicitor Hare: The State denied separately and severally each and every allegation contained in the motion to quash the indictment and the motion to quash the venire



and the special motion that relates to evidence before the grand jury, and demands strict proof thereof.

ARTHUR MORRISON PITTS, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. What is your name, sir?

A. Arthur Morrison Pitts.

Q. What is your occupation?

A. Attorney at law.

Q. How long have you been practicing here in Selma?

A. Since June, 1903.

Q. You have been practicing here in Selma, Dallas County, Alabama, since that time?

A. Yes.

Q. Mr. Pitts, a large portion of your practice is criminal?

A. Yes, a good part of it. Of course, I have other types—

Q. You have a large practice among the colored people of this section?

A. Yes, I do a large practice among them.

Q. Have you had many causes tried before juries in Dallas County?

A. I have. Both civil and criminal.

Q. Are you familiar with the constitution of grand juries in Dallas County here?

A. With what?

Q. With the constitution of grand juries, their make-up with reference to color?

A. I think I am pretty familiar with it. I couldn't say I have known all of them. I have seen them in Court. That's about all I know.

Q. Mr. Pitts, during the time that you have been prac-

ticing, how many grand juries in this jurisdiction have you [fol. 36] known to include negroes?

A. I do not know of a single one being drawn, but I have known of negroes being summoned. But they were not drawn on the grand jury.

Q. Have you ever known a negro to be drawn for the grand jury?

A. No.

Q. What is the usual practice for drawing?

A. You have the jury for civil week, and out of that number they take eighteen names. The names are put in the hat, and the Judge usually puts his handkerchief over the hat and draws the name, and calls the name out and they come around and sit in this box (indicating the jury box), and they have eighteen seats.

Q. Tell us, Mr. Pitts, for the sake of the record, where is the drawing usually done?

A. Done the first of the civil docket.

Q. In what room?

A. Drawing the whole jury?

Q. The drawing of the grand jury.

A. Drawn here, right here in the court room.

Q. And is it usual that attorneys and others are sitting here in the court room when it is done?

A. Depends on whether they have civil cases. All of them are here who have a civil case.

Q. And you have never seen or heard of a negro being drawn for grand jury duty since you have been practicing law?

A. I have heard of them being drawn on the panel, but never coming out of the hat.

Q. You are saying that you have heard of names being drawn on the panel?

A. Yes, sir.

Q. But you have never known a negro's name drawn for the grand jury by the Judge?

A. Not that I have known of.

Q. Do you think you would have known of any negro who had served on the grand jury?

A. Yes.

Q. There isn't any chance of some negro serving and you wouldn't know of it?

A. It is a possibility but not a probability.

Q. Getting back to petit juries, Mr. Pitts, you have tried quite a few criminal causes before juries in this Court?

A. Yes.

Q. Have you ever known of a negro to serve on a petit jury?

A. No, limited to this way: I have seen them on the venire but they were stricken off.

Q. For some reason?

A. Attorney for the defendant strikes them off or by the State.

Q. For some reason they are struck off?

A. No, they never serve.

Q. Since 1903.

A. We have a right to strike our jury.

Q. You strike them off, but no negro has ever been acceptable to somebody? No negro has ever served on a petit jury since you have been practicing?

A. No, not that I know of.

[fol. 37] Q. Who would you say has the largest criminal practice in this county?

A. Our firm and Mr. Tom Gayle.

Q. Your firm has a large proportion of criminal practice?

A. Yes. And others. I don't keep up with the other business, but I see Mr. Gayle and others in Court a good deal.

Q. I wonder, Mr. Pitts, if you were living in this county at the turn of the century, before you went away to law school. I was going to ask you, sir, if you have known of any negro that served on a grand or petit jury during your life time?

A. I have been here since the year 1890. I have never seen a negro serve on either a grand jury or petit jury. Prior to that time, I have heard of it. I don't know whether it is true or not.

Q. During the days of reconstruction?

A. Yes.

Q. But never, since the days of reconstruction?

A. I can't tell you that. I'm not that old.

Attorney Hall: Thank you, sir. That is all.

Cross-examination.

By Solicitor Hare:

Q. Mr. Pitts, have you ever had occasion to see negroes on the venire in Dallas County?

A. Yes, sir.

Q. And do you recall when those occasions were, or on how many occasions?

A. No, I can't recall. I know the week that this defendant was tried before, I think there were five names on there.

Q. And in the past had you seen them?

A. I am not positive. But those five, I think, and I saw that last civil jury up here and I'd say, I think, seven of them up here and they stayed during the week. And then this present venire I counted from ten to eleven—I'm not sure. I am not positive on that.

Q. In the last ten years have you had occasion to see the names of negroes on the venire?

A. I can't state positively. I know of one instance I heard about, Mr. Hare, a negro by the name of Hopson who was up here when John Miller was on the bench. I don't know that for a fact. I heard it, I don't know it.

Q. Have you ever had occasion to strike a jury in Dallas County, Alabama, when negroes were on the venire?

A. Yes, sir.

Q. Were you acting in the capacity of defense attorney?

A. Yes, sir.

Q. Did you have occasion to strike the names of negroes?

A. Well, myself or my son did it.

Q. Have you ever tried a case in Dallas County with negroes on the jury, in which you struck a jury?

[fol. 38] A. No, I never did. At times I would agree with attorneys on the other side. I would agree certain names to be stricken, both white and colored. That is civil, though.

Q. And you have struck them on your own initiative?

A. Yes, sir.



Q. And I will ask you if you have consistently struck negroes from the petit jury?

A. Every time one appeared on a petit jury where I was engaged, if I knew his name I have consistently struck them.

Q. Under the procedure in Alabama, how many strikes does the defendant have in criminal cases compared to the State?

A. The defendant has two and the State one.

### Redirect examination.

By attorney Hall:

Q. I believe you said that you had recognized how many negroes? On what venire? You said five on what venire?

A. I said the last term of Court. I think it was about five.

Q. When was that, sir?

A. That was at the term of Court when this motion was quashed.

Q. Mr. Pitts, I believe you testified on the hearing of those motions to quash that at that time you were able to ascertain who those negroes were and tell us what their names were?

A. I remember only two of them. One was Ned Braxton and one was Boyd, who was at the City National Bank.

Q. Ned Braxton and Boyd. Now, Mr. Pitts, isn't it a fact that Ned Braxton and Boyd were two of the names which had been entered on the jury roll in pencil?

A. I don't know anything about the jury roll.

Attorney Hall: May we have the jury roll?

The Court: Which one?

Attorney Hall: The last one.

The Court: Get the present jury roll.

Attorney Billingsley: Just the present one will be all right.

(A deputy sheriff goes for the jury roll)

Q. While they are getting that, Mr. Pitts, when you said you recognized thirteen names—

A. (Interrupting) No, I said ten or eleven.

Q. Will you point those names out?

A. I have them marked on a list at my office.

Q. What I thought you said was you recognized those names.

A. Marked on my list.

[fol. 39] Q. We have no objection to your checking on it. You can do that later on.

A. I can tell you some of them here.

Q. Will you do that, please, sir?

A. Number nine, I am not positive. Willie Smith, there. It may be a Willie Smith a white man or colored, I can't tell you.

Q. But you know there is a negro by that name?

A. That is my recollection.

Q. And he is a farmer?

A. (No answer) And there is Morgan Barnes. I know a Morgan Barnes that is a mechanic, and he is a colored man.

Q. Yes, sir.

A. It may be some other Morgan Barnes. Number Twenty-seven, I am not positive about that, John Henry Roberts. I don't know whether that is a colored man or a white man. I do not know. Now, number thirty-five, I have been told that he is a colored man. I couldn't swear to it, except for information in investigating, that I found that out. You will notice on forty-five there is a Will J. Smith—excuse me. Number forty-seven Charlie Rascoe, Jr., I am absolutely positive he is a colored man. I happened to defend him one time as a client.

Q. Charlie Rascoe, number forty-seven.

A. Yes.

Q. You did say you defended him?

A. I said he was a colored man. I knew his father or his uncle, and they have been my clients out there.

Q. Charlie, Jr.?

A. No, his father or uncle. I don't know anything about Charlie, Jr., just taking it from the name.

Q. I see. Is that all, sir?

A. I am going over it now. Now, number seventy-one, Goodwin. I know he is a colored man. He works up there at Valley Creek stable, seventy-one. That is the only ones

I can tell you, but I have a list of them at my office. I would be glad to get it.

Q. Thank you very much, Mr. Pitts, and you know that those are negro men?

A. I know Washington Goodwin is.

Q. And the names of two negroes you recall on previous venire?

A. That was when this boy was up here for trial before.

Q. Tried or motions?

A. Tried on another case. And the last term of Court there were a number.

Q. But none of them served on either a petit or grand jury?

A. No.

Q. As far as you know, none of them ever served.

A. No.

Q. None has ever served in Dallas County on either grand or petit juries?

A. No.

[fol. 40]

Recross-examination.

By solicitor Hare:

Q. Mr. Pitts, I hand you this list, and ask you to look at forty on that list, No. forty, John Willie, farmer. Do you know whether that is a white man or colored?

A. No, I can not tell you. I think he was on the list that was given me as being a colored man, but I couldn't tell you, Jimmie.

Q. Forty-three, Tom Waller?

A. He is a negro dry cleaner here.

Q. Now, fifty-one, Douglas Harris. Do you know whether he is white or negro?

A. I couldn't tell you that, but I could tell you on my list. I have them marked on my list. I went over the whole thing very carefully and found out about all of them. They are all on my list there and marked, which ones I was told. I would be glad to get them and show them to you. It may be when I said to the attorney over here (indicating Attorney Hall) ten or eleven, that I had some of them on special venire, I am not positive about that.

# Redirect examination.

By Attorney Hall:

Q. Mr. Pitts, I would like to ask you: you have never seen over twelve on there?

A. I don't know.

Q. Under the system down here in Dallas County, they could put as many as twenty-four on there, and they would all be struck?

A. I couldn't tell you that.

Q. I will ask you this question: do you know or do you have any knowledge of the constitution of the citizenry of Dallas County with reference to color or with reference to numbers?

A. I think five to one.

Q. You mean five negroes to one white man?

A. Yes, that's what I have been told. I don't know whether it is true or not.

Q. Assuming that is true, and assuming that the jury commission of Dallas County were to build its jury roll according to the statute—

Special Prosecutor Gayle: We object to that.

The Court: Hypothetical question. Over-rule.

Special Prosecutor Gayle: We except to your Honor's ruling.

Q. Assuming that the jury commission would build its jury roll according to the statute in such cases, and assuming that the population of Dallas County is five to one on the negro side, then, wouldn't it be absolutely impossible for the attorneys for the defendant and for the State to strike all of the negroes?

A. Not on a petit jury.

Q. Wouldn't the laws of probability over a period of thirty years see to it that one negro would serve?

[fol. 41] A. I think not. The way I look at it, the way the jury list is fixed, even though the population may be larger, that have to examine the character and judicial capacity. And I have confidence in our jury commission to do the right thing. That's what I think.

Q. Is it your considered opinion that the jury commission goes into the character of everybody on this book?



A. I don't know a thing in the world about it.

Q. You expressed an opinion just a minute ago with reference to how they handle it.

A. I have absolute confidence in them.

Q. It is your opinion—you have confidence that they have gone into the character of everybody on this book?

A. I have absolute confidence in the jury commission of Dallas County, that they have kept their oath in following the law, and I have never questioned anything they put in the jury box.

Q. Mr. Pitts, I will ask you this question, and it isn't calculated to doubt what you have just said: do you have in Dallas County the same jury commission at this time that you had in September, 1953?

A. Yes, sir, same ones.

Q. Is it your opinion that in September, 1953, previous to the time they have drawn this last jury roll, which we have not introduced in evidence—

Attorney Hall: We would like to introduce in evidence at this time—we note that the various books are marked Exhibit A, B and C. We assume that those are from the previous hearing?

The Court: Yes, sir.

Attorney Hall: With the Court's permission, we will request that this particular book marked Defendant's Exhibit A, purporting to be the jury roll of Dallas County, Alabama, from 1951 to 1953; and this book purporting to be Defendant's Exhibit B, purporting to be the jury roll of Dallas County from 1942 to 1951; and this book marked Defendant's Exhibit C, purporting to be the jury roll of Dallas County from 1931 to 1942; we would like to offer them in evidence, your Honor. (Above described three jury rolls accepted in evidence without objection as Defendant's Exhibits A, B and C)

(Said Exhibits A, B and C cannot be conveniently copied into the record and are being sent to the Supreme Court as original evidence for its inspection)

Attorney Hall: Defendant would like to offer in evidence this book purporting to be the jury roll of Dallas County compiled in October, 1953, which is marked Defendant's Exhibit X.

[fol. 42] (Above described jury roll, October, 1953, accepted in evidence without objection as Defendant's Exhibit X)

(Said Exhibit X cannot be conveniently copied into the record and is being sent to the Supreme Court as original evidence for its inspection)

Attorney Hall: Mr. Pitts, I don't believe we have any other questions.

Recross-examination.

By Solicitor Hare:

Q. You say that over your period of practicing law, that you have consistently struck negroes from serving on a petit jury of Dallas County, and your firm has?

A. Yes.

Q. I will ask you if that has ever been done by any agreement with the State or understanding with the Court, or under any stipulation or agreement?

A. There has been no agreement as far as the State has been concerned. I have agreed with other attorneys on civil.

Q. Have you ever seen the name of a negro on a venire of Dallas County where he was identified by race?

A. No, I never have.

Q. Isn't it customary for those persons to be so identified on the venire issued by the Marshall?

A. I am not sure. I have seen lists where it was. I don't do much practice in Federal Court.

---

McLEAN PITTS, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Mr. Pitts, you are Mr. McLean Pitts?

A. Yes.

Q. What is your occupation?

A. Attorney.

Q. Do you practice here in Selma, Alabama?

A. Yes.

Q. How long have you been practicing here?

A. Twenty years.

Q. What is the nature of your practice?

A. General practice of law.

Q. Is there any emphasis on any particular aspect?

A. I said general practice of law.

Q. Is it a fact that you have a large negro clientele?

A. I'd say yes.

Q. Would you say that you have more negroes as clients than white people?

A. No.

Q. Would you say you have more white folks?

A. I wouldn't say either one.

[fol. 43] Would you say that is about "even Steven"?

A. I suppose so. I have never made any examination to find out.

Q. During the course of that twenty years of practice, have you had occasion to represent defendants in criminal proceedings in this Court?

A. Yes.

Q. You are familiar with the constitution of petit and grand juries in this Court?

A. Yes.

Q. Have you ever known a negro to serve on a grand jury in that twenty years?

A. No.

Q. On a petit jury in this county?

A. Yes.

Q. When, Mr. Pitts?

A. About five years ago.

Q. They actually served on a (petit jury here in Dallas County?

A. Yes, one negro.

Q. Do you recall his name?

A. No, I don't recall his name. I know who he was, but I don't recall his name.

Q. Would you recognize his name if you saw it listed some place?

A. No.

Q. But you are sure one did serve? Was it a cause in which you were interested?

A. Yes.

Q. Do you recall the particular style of the cause?

A. No, I don't.

Q. Is it possible that you could find it in your file in your office?

A. I don't believe so.

Q. But you are sure that one negro served?

A. Positive.

Attorney Hall: Thank you, sir.

Cross-examination.

By Solicitor Hare:

Q. Mr. Pitts, you are in practice with your father here, the witness that just preceeded you to the stand?

A. Yes, sir.

Q. Have you ever had occasion to see negroes on the venire in Dallas County?

A. Yes, sir.

Q. And I will ask you if it has been your consistent practice since you have been an attorney to strike negroes from serving on petit juries in Dallas County?

A. Yes, sir.

Q. I will ask you, Mr. Pitts, if at any time you have ever had any—

A. (Interrupting) Most of them want us to strike them, too.

Q. Have you ever had any agreement with the solicitor or any officer of the Court with reference to striking negroes from petit juries?

A. Never.

[fol. 44] Q. Did you strike them on your own initiative and acting in your client's interest?

A. Yes, sir.

Q. Have you struck negroes from the petit jury when you were representing negroes, negro clients?

A. Yes, sir.

Q. Mr. Pitts. I will ask you if you have ever seen the



name of a negro on a venire that you received from the Clerk identified as such on the venire?

A. No, sir.

Q. Have you ever gotten venires from the Marshall of Federal Court in Alabama and had the names on the venire so marked?

A. Yes, sir.

Q. I will ask you if that is the practice in the Federal Court in Alabama, to identify negroes on the venire?

A. I don't know whether that is a general practice, but the ones I have received in the United States District Court for the Southern District of Alabama, it has been followed by the letter "c".

Solicitor Hare: That is all.

---

THOMAS G. GAYLE, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Your name, please, sir?

A. T. G. Gayle.

Q. What is your occupation?

A. Attorney at law.

Q. Where is your office located?

A. 1104½ Water Avenue, Selma, Ala.

Q. That is in Dallas County, Alabama?

A. That's right.

Q. How long have you been engaged in the practice of law in this jurisdiction?

A. Since 1926.

Q. Mr. Gayle, do you have a specialty in the practice of law?

A. General practice.

Q. But you have had considerable number of criminal cases?

A. Yes.

Q. And also some civil causes?

A. Civil and criminal.

Q. Tried before juries?

A. Yes.

Q. You are familiar with the constitution of grand juries of Dallas County since 1926, with reference to race?

A. That's right.

Q. Have you ever known a negro to serve on the grand jury of Dallas County?

A. Not to my knowledge.

Q. Have you ever known a negro to serve on a petit jury in Dallas County?

A. Not to my own personal knowledge.

Q. There are very few terms in this Court in which you don't have something pending?

A. A few.

Q. Aren't you usually in attendance at most Court sessions?

A. Yes.

[fol. 45] Q. Would it be possible that there has been a time some negro was serving on the jury that you didn't know about?

A. It would be possible, but I think I would know it.

Q. Were you practicing here in Dallas County five years ago?

A. I was.

Q. Did you know of any negro serving at that time?

A. No.

Q. Any time recently?

A. At no time do I know of any negro serving on a petit or grand jury here of my own knowledge.

Cross-examination.

By Solicitor Hare:

Q. How long have you been practicing in Selma?

A. Since 1926.

Q. Since that time have you had occasion to see the names of persons that you knew to be negroes on venires in Dallas County?

A. I have.

Q. And I will ask you, Mr. Gayle, if you have consistently

struck negroes from serving on petit juries in Dallas County, Alabama?

A. I have.

Q. I will ask you if you have struck them when you were representing negroes, when representing negro clients?

A. I have.

Q. And have you ever struck negroes from serving on petit juries in criminal cases in Dallas County by any agreement with the solicitor or any officer of the Court?

A. No, sir. I don't have agreements with the solicitor, as far as the jury is concerned.

Q. But negroes have appeared on those venires?

A. They were on the venire, yes, sir.

Q. And you have consistently struck them?

A. I have consistently struck them.

Q. Have you ever had a negro client who requested you to retain negroes on the jury?

A. Never in my life.

Solicitor Hare: That is all.

Redirect examination.

By Attorney Hall:

Q. Is it customary for your clients to tell you who to retain on the jury?

A. No, but it is customary for me to discuss the jury with my client.

Q. Will you tell us what procedure is gone through in the selection of a grand jury in this county?

A. It is drawn during civil week. The Judge puts all of the names in the hat that are summoned for the entire week, that consists of the grand jury and petit jury for civil week. Then the Judge draws the grand jury from [fol. 46] that list—puts a handkerchief over the hat and draws eighteen names for the grand jury.

Q. Under what conditions is it usual to excuse a man from grand jury duty, if his name is drawn from the hat?

A. I have never heard of that.

Q. Have you ever heard of a man being excused from grand jury duty?

A. I have not, unless he has a doctor's certificate, which he would produce before that.

Q. You infer that negroes have been in the group called for service?

A. That's right.

Q. For both petit and grand juries?

A. That's right.

Q. If a negro's name had been drawn from the hat, then he would have served on the grand jury?

A. I think so.

Q. So, under the circumstances, no negro's name has ever been drawn from the hat?

A. As far as I know, they have not.

Q. You know they have been in the group?

A. I know that. I have sat there and watched them come to the rail.

Q. And while sitting there watching the judge draw their names from the hat for service on the grand jury, since 1926, you have never seen a negro's name drawn from the hat?

A. I have not said I was there every time.

Q. During the times you were there, have you ever heard the name of a negro called as being drawn from that hat?

A. No.

Q. Have you known of a negro being called and excused?

A. None that I know of.

#### Recross-examination.

By Solicitor Hare:

Q. You say you have frequently seen negroes on the venire here in Court in Dallas County. I will ask you if you have had occasion to see them come up and ask to be excused from jury duty?

A. Yes, sir, I have.

Q. And frequently they have been excused?

A. I have seen some of them excused. I have seen a lot of people excused on numerous occasions.

Q. Excuses are made before the grand jury is drawn?

A. That is correct.



Q. Mr. Gayle, you have not been at every drawing of a jury in Dallas County?

A. No, sir, I have not.

Q. And you have in recent years had occasion to miss a number of terms of Court due to illness?

A. I have. I was in New Orleans for about eighteen or nineteen months. I'd like to qualify my statement that I have practiced here since 1926, because I was in New Orleans with the Federal Land Bank awhile.

WILLIAM B. CRAIG, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. You are Attorney William Craig?

A. Yes.

Q. Practicing attorney here in Selma, Alabama?

A. Yes.

Q. How long here?

A. Twenty years, with the exception of two years in the navy.

Q. You are engaged in the general practice of law here?

A. General civil practice.

Q. In the course of your practice, have you had occasion to try cases before juries?

A. Yes.

The Court: Mr. Craig is City Recorder.

Q. I see. Then you are a judge?

A. That's right, judge of the City Court.

Q. Have you been recorder during the whole period of twenty years?

A. No, I've been recorder about ten years.

Q. Previous to that time did you have occasion to represent clients before juries in criminal proceedings?

A. Yes.

Q. And your general practice is here in Dallas County?

A. Generally, yes.

Q. Have you ever known of a negro to serve on the grand jury in this county?

A. No, I have not.

Q. Have you ever known of a negro's name drawn from the hat for service in this county?

A. No.

Q. Have you ever known of a negro to serve on a petit jury in this county?

A. No, I have not.

Q. You never have?

A. No.

Attorney Hall: That is all. Thank you, sir.

Cross-examination.

By Solicitor Hare:

Q. Have you ever seen negroes appear for jury duty and names of negroes to appear on the venire in Dallas County?

A. I wouldn't like to say. It has been a good while since I've seen a venire.

Q. You are seldom in the Circuit Court during the formation of the grand jury?

A. That's right.

[fol. 48] Q. Are you ever present at the time juries are drawn in Dallas County?

A. Not normally—occasionally.

Solicitor Hare: That is all.

M. ALSTON KEITH, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. You are Mr. Alston Keith, sir?

A. I am.

Q. Are you a practicing attorney here in Selma, Alabama?

A. I am.

Q. How long have you practiced here?

A. Since August, 1930.

Q. Is your practice general, sir?

A. Yes.

Q. You have occasion to represent your clients in both criminal and civil procedures?

A. Yes.

Q. You have tried cases before juries in this jurisdiction, sir?

A. I have.

Q. You are familiar with the formation of grand juries in this jurisdiction, with reference to color, during the period of time you have practiced?

A. I have been present when a number of grand juries were drawn and impaneled.

Q. So you have seen a number of grand juries after they were formed?

A. Yes.

Q. And you have witnessed a number of grand juries being organized?

A. Yes.

Q. During the course of your practice, have you ever known a negro to serve on a grand jury in this county?

A. I have not.

Q. Have you ever known of a negro to be drawn for service on such a grand jury?

A. Not to my knowledge.

Q. Have you ever known a negro to serve on a petit jury?

A. Not in Dallas County.

Q. Then you don't know of any negro doing such service?

A. Not to my knowledge. It is quite possible that a negro has served on a petit jury and grand jury and I not know it.

Q. We realize that it might be possible.

A. So far as I know, none have served on either grand or petit juries.

Q. Thank you, sir. Tell us, Mr. Keith, during the years in which you have practiced in Dallas County, Alabama, have you ever seen the names of more than two or three persons on a jury list or venire whom you could identify as negroes?

A. In my opinion and according to my recollection I

would say there have been several on every venire that I have examined.

[fol. 49] Q. When you say "several", what do you have in mind?

A. That is between three and six that I could identify as negroes. There may have been others.

Q. Let's go back to last year. Can you tell us of a particular venire or particular term of Court when you had occasion to examine the venire and there were negroes on it?

A. I can't name any particular term or any particular year.

Q. Sir, I show you what purports to be the jury roll for Dallas County, Alabama, for the years 1951 through 1953. I realize you are a very busy man, sir, and I'd like to have you go through this jury list and—never mind. That is all.

#### Cross-examination.

#### By Solicitor Hare:

Q. During your practice of law in Dallas County, have you consistently struck negroes from serving on a petit jury in Dallas County?

A. I have not made any practice of it. No.

Q. Have you ever represented negro clients in this Court, civil and criminal?

A. Yes, sir.

Q. Have you ever had a request from one of your clients to leave a negro on the jury?

A. I don't recall that I have.

Q. Have you ever struck a negro from a jury in a criminal case in Dallas County by any agreement with the solicitor or any officer of the Court?

A. I have not.



HARRY W. GAMBLE, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Your name, please, sir?

A. Harry Gamble.

Q. What is your occupation?

A. Lawyer.

Q. How long have you been a lawyer, sir?

A. Thirty years.

Q. Have you practiced that entire thirty years in this jurisdiction here in Selma, Dallas County, Alabama?

A. Yes. I practiced one year in Florida before I came to Selma.

Q. But you have been practicing here continuously how many years?

A. Thirty years.

Q. I see. Is your practice general?

A. Yes, general practice, but very little criminal work.

[fol. 50] Q. However, you have had some criminal work?

A. Some.

Q. You have had occasion to observe various juries organized over the years?

A. I have seen them organize a good many.

Q. Both grand and petit juries?

A. That's right.

Q. Have you ever known a negro to serve on a grand jury in this county?

A. No, not that I know of.

Q. Have you ever seen a negro included in the organization of a grand jury?

A. You mean——? I don't know what you mean by "organization."

Q. When the names are actually pulled from the hat. Have you ever known a negro's name to be pulled from the hat?

A. I wouldn't know of any. There might have been.

Q. You don't know of any yourself?

A. No, not of my own knowledge.

Q. Have you ever known a negro to serve on a petit jury in Dallas County?

A. Not to my knowledge.

Q. You were present here in Dallas County five years ago?

A. Yes.

Q. Do you know of any negro who served on a petit jury five years ago?

A. Not to my knowledge.

Cross-examination.

By Solicitor Hare:

Q. Have you ever had occasion to strike the names of negroes in the selection of a petit jury in Dallas County?

A. I might have struck them, but I have never known them by name.

Q. Did you ever strike the name of any by any agreement with the solicitor or any officer of the Court?

A. No, sir.

ROYAL RANDOLPH SMITH, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Your name, please, sir?

A. Royal Randolph Smith.

Q. Your occupation?

A. Lawyer.

Q. How long have you been a lawyer?

A. Since June 1, 1928.

The Court: Mr. Smith is City Attorney.

Q. Mr. Smith, I understand you are City Attorney. How long have you been?

A. Since 1941.

Q. Previous to that time were you engaged in the general practice of law?

A. I was Recorder from 1935 to 1941, and started practicing in 1928.

[fol. 51] Q. From '1928 to '35 were you engaged in the general practice of law?

A. I still am, except I don't have too much criminal practice.

Q. Do you represent the City of Selma in cases appealed from Recorder's Court?

A. I did from 1941 until about six years ago, then I stopped prosecuting in the City Court. Mr. Edgar Russell is the prosecutor in the City Court.

Q. So you are only concerned with civil matters in the City of Selma?

A. Yes.

Q. You have had some experience in the Circuit Court of Dallas County, Alabama, with reference to the formation of grand juries and petit juries?

A. Yes, I have.

Q. And you have seen grand juries organized in this county?

A. Yes, I have. Numerous times.

Q. And you have seen many, many petit juries serve in this county and in this Court?

A. Yes.

Q. During the course of your entire career, have you ever known a negro to serve on a grand jury in Dallas County?

A. No, I have not.

Q. Have you ever seen a negro serve on a petit jury in this county?

A. No, I have not.

Cross-examination.

By Solicitor Hare:

Q. Have you had occasion to strike negroes in the selection of petit juries?

A. I don't recall that I have, Mr. Hare.

Q. If you have struck any, has that been by agreement with the Court or the solicitor or any officer of the Court?

A. No, it wouldn't have been by agreement, but I don't recall that I have ever struck any.

Q. I will ask you, in your years of practice here, if you

have ever seen the names of negroes on the venire of Dallas County?

A. I don't recall that I have.

Q. You usually get a copy of the venire and check it?

A. Yes, sir, but of my own knowledge I don't recall that. Sitting here this morning in 1953 I can't recall any occasion of it.

The Court: We will take a ten minutes recess.

(Court stands in recess for a few minutes, then called to order and trial resumed)

---

[fol. 52] EDGAR A. STEWART, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Your name, please, sir?

A. Edgar Stewart.

Q. Your profession?

A. Attorney at law.

Q. Where do you practice?

A. In Selma.

Q. How long have you been practicing here?

A. Since June, 1932.

Q. Have you been engaged continuously in the general practice of law since 1932?

A. Yes, with the exception of the war years, when I was in service.

Q. Your practice is general?

A. It is chiefly civil. I have no criminal practice.

Q. Have you ever witnessed the formation of a grand jury in this county?

A. Yes.

Q. Have you been present on occasions when these juries were organized?

A. Yes.

Q. Do you know of any single occasion when a negro has been drawn for service on any grand jury in Dallas County?



A. I do not.

Q. Have you ever seen a negro's name drawn for such service?

A. You mean on the venire or grand jury?

Q. For service on the grand jury.

A. I have never seen a negro serve on the grand jury.

Q. The general practice is to draw up your venire from your jury box and from them, from that particular number of names or list the grand jury is drawn?

A. That is correct.

Q. Now, sir, what we want to know is this: have you ever known a negro to be drawn for service on a grand jury in Dallas County?

A. No, I have not. I have known negroes to be on the venire from which the grand jury is drawn.

Q. You have seen negroes' names on the venire?

A. Yes.

Q. Do you recall the first occasion you remember seeing a negro's name on the venire in Dallas County?

A. Specifically, no; but I recall on at least one or more occasions fifteen or more years ago negroes' names on the venire.

Q. Do you recall whether there were one or two or several?

A. No, I don't recall the specific number or the names.

Q. But you know there were some names, or a number of names, on the venire?

A. That is correct.

Q. I see. Getting back to the grand jury, you have never known a negro to serve as a grand juror in this county?

A. No.

Q. You have never known a negro's name to be drawn for service on a grand jury who was excused for any [fols. 53-54] reason?

A. No.

Q. Have you ever known a negro to serve on the petit jury in this jurisdiction?

A. I have in this jurisdiction. Not in this Court.

Q. In this Court?

A. In the Circuit Court of Dallas County, Alabama, no.

Q. That includes all of the petit juries, civil and crim-

inal? You have never seen a negro serve in Dallas County, Alabama?

A. Not actually serve, no.

Cross-examination.

By Solicitor Hare:

Q. You say that you have frequently seen names of negroes on the venire in Dallas County?

A. Yes.

Q. And have you struck them when the venire contained the names of negroes?

A. Yes, sir.

Q. Have you consistently struck the names of negroes from the venire of petit juries?

A. The names have been struck. I have never had one serve on a jury in a case which I was trying.

Q. Do you practice in the Federal Court?

A. Yes, sir.

Q. I will ask you if you have ever seen a venire issued by the Clerk of the Circuit Court of Dallas County bearing the names of negroes, on which those persons were identified by some mark as being members of the negro race?

A. I have not.

Q. Have you ever seen venires from the Marshall of the Federal Court Southern District of Alabama on which the names of negroes were identified as such?

A. Yes, sir, I have.

Solicitor Hare: That is all.

[fol. 55] B. VALENTINE HAIN, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Your name, please, sir?

A. B. V. Hain.

Q. Mr. Hain, what is your profession?

A. I am an attorney at law.

Q. Where is your office located?

A. 1000½ Water Avenue, Selma.

Q. That is in Selma, Alabama?

A. Yes.

Q. And Selma is in Dallas County?

A. Yes.

Q. How long have you been practicing here?

A. I was admitted to the Bar in 1941.

Q. Is Selma your home?

A. Yes.

Q. You were born and reared here in Selma?

A. In the county, yes.

Q. In Dallas County?

A. Yes.

The Court: You were out a couple of years, in the service?

The Witness: Yes, from 1942 to 1946.

Q. Are you engaged in the general practice of law?

A. Yes.

Q. You are frequently present when grand juries are organized?

A. Not frequently, but I have been.

Q. And you have had occasion to try cases before petit juries in criminal proceedings in this Court?

A. Yes.

Q. Tell the Court, sir, if you have ever during your entire career known of a negro serving on a grand jury in Dallas County, Alabama.

A. I have no personal knowledge of it. No.

[fol. 56] Q. Have you ever known a negro to serve on a petit jury in Dallas County?

A. I have no personal knowledge of it, no.

Attorney Hall: Thank you, sir. That is all.

Cross-examination.

By Solicitor Hare:

Q. You do an extensive criminal practice in the Circuit Court?

A. No, Mr. Hare.

Solicitor Hare: That is all.

---

CHAMBLISS KEITH, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. You are Mr. Chambliss Keith?

A. Yes.

Q. What is your profession?

A. Attorney at law.

Q. Where is your office?

A. Selma, Alabama.

Q. That is in Dallas County?

A. Yes.

Q. How long have you practiced here?

A. I was admitted to the Bar in 1939, and except for five years in the Air Corps I have practiced here. Except that time.

Q. Is Dallas County your home?

A. Yes.

Q. Is your practice general?

A. Yes.

Q. Both criminal and civil?

A. Yes.

Q. Do you have a large number of colored clients, both white and colored?

A. Yes.

Q. Have you been present on occasions when the grand jury has been organized in this county?

A. Yes.

Q. And you have had occasions to try cases before petit juries in this county?



A. Yes.

Q. Tell the Court, please, sir, how many negroes you have known to serve on the grand jury in Dallas County.

A. None.

Q. How many negroes have you known to serve on petit juries in this county?

A. None.

Cross-examination.

By Solicitor Hare:

Q. Have you ever known of a negro or numbers of negroes to appear on the venire of Dallas County?

A. Yes.

Solicitor Hare: That is all.

JOHN RANDOLPH SMITH, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Your name, please, sir?

A. John Randolph Smith.

Q. What is your profession?

A. Attorney at law.

Q. You practice in Selma?

A. That's right.

Q. That is in Dallas County, Alabama?

A. Yes.

Q. How long have you been practicing here?

A. Nineteen years, with the exception of three years and eight months I was in the army.

Q. Is your practice general?

A. Yes.

Q. Is your clientele mixed, both white and colored?

A. Yes.

Q. Have you been present on numerous occasions when

grand juries were being organized in this county and in this Court?

A. On several occasions, yes.

Q. Do you qualify the occasions?

A. No, I don't remember each one. Something like once or twice a year. Sometimes I am present and sometimes I am not.

Q. For nineteen years you can say at least once a year you have seen a grand jury organized?

A. Something like that.

Q. Have you tried many cases before petit juries in this Court?

A. Yes, I have tried several of them.

Q. Would you say one or two, or more numerous?

A. More numerous than that. Whatever I had, if it was one or four or five at one term of the Court.

Q. But you have tried at least several each year, at least?

A. Yes.

Q. I see. Now, Mr. Smith, tell the Court, please, sir, how many negroes you have known to serve on grand juries in Dallas County.

A. I don't know—I've never seen any negroes or white people. I have never seen a grand jury, other than setting in the chairs.

Q. You said you were present when grand juries were being organized.

A. When they were drawn. I have never seen a negro on the grand jury. I don't know anything but what I have seen.

Q. Assuming you are present when the names are drawn out and read aloud, have you ever recognized the name of any negro?

A. I wouldn't know the names of negroes. Some have the same names as white people.

[fol. 58] Q. Do you recall any occasion when a negro's name was read?

A. I don't recall having seen any in the grand jury box. I don't recall all of the names read out.

Q. Do you recall the name of a single negro?

A. No, I don't recall the name of a single negro or of a white one.

Q. Mr. Smith, are you a negro?

A. What?

Q. What is your race? Are you white or colored? For the record, Mr. Smith, are you a negro or a white man?

A. I am a white man.

Q. And you are a white lawyer in Dallas County, Alabama?

A. That's right.

Q. And when his Honor is organizing the grand jury in this county, if the name of a negro was read out you would remember it, wouldn't you?

A. Not necessarily.

Cross-examination.

By Solicitor Hare:

Q. Mr. Smith, over a period of years, have you frequently had occasion to see the names of negroes on the venire in Dallas County?

A. I would not know, by looking at the names, whether they were white or colored.

Q. Have you had occasion to see negroes stand by the rail here when venires were called?

A. I have.

Q. Have you ever had occasion to strike the names of negroes or to know that the names of negroes were stricken in the trial of cases, by either side?

A. Not that I know of.

Q. You do know that negroes have answered to call?

A. I have seen them standing at the rail.

Solicitor Hare: That is all.

Redirect examination.

By Attorney Hall:

Q. In trying their cases before petit juries, have you seen any negroes on any petit jury?

A. No, I have never seen one on the jury.

ARCHIE T. REEVES, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Give the Court your name, please.

A. Archie Reeves.

[fol. 59] Q. Your profession, sir?

A. Lawyer.

Q. Where do you practice?

A. In Dallas County and the surrounding counties in this Circuit.

Q. Your office is located in Dallas County?

A. Yes, in Selma.

Q. And you practice in all of the counties located in this particular circuit?

A. Most of them.

Q. How long have you been practicing here in Dallas County?

A. Since 1932.

Q. And is your practice general, sir?

A. Yes. We don't have as much criminal practice as some of the other lawyers, but we do have some.

Q. Do you represent both white and colored clients?

A. Yes.

Q. And have you been present on occasions when grand juries were organized in this county?

A. Yes.

Q. Have you been present when their names would be drawn from the hat by the officials?

A. Yes.

Q. And you have listened to the reading of those names when they were drawn?

A. Well, I have listened to them. I could hear the names, but I wouldn't pay too much attention to it.

Q. Have you been present on occasion when the grand jury was being charged by the Court?

A. Yes, I have.

Q. And you have observed the grand jury at that time?

A. I have seen the grand jury sitting in the box.

Q. And you have also tried both civil and criminal cases

before petit juries in this Court, the Circuit Court of Dallas County, Alabama?

A. That is correct.

Q. I'd like for you to tell the Court, please, sir, how many negroes you have seen serve or known to have served on grand juries of Dallas County, Alabama.

A. I don't recall having seen any negroes actually serve on the grand jury. I have seen them on the venire.

Q. When you say "venire", what do you mean?

A. I mean the venire from which the grand jury was chosen.

Q. Let's explain that for the record. What do you mean?

A. A venire is a group of men summoned to serve as jurors, and it is generally composed of from sixty to eighty men; and from that group his Honor will select eighteen from the hat to act as grand jurors.

Q. From the sixty to eighty names drawn, or cards drawn from the jury box, his Honor selects eighteen to act as the grand jury. How does he do that?

A. Draws them from the hat.

Q. Does he put all of the cards in the hat?

A. Yes.

Q. And then he draws from the hat eighteen names to serve as grand jurors?

[fol. 60] A. That is correct.

Q. Now, tell us, sir, have you ever known his Honor to draw the name of one negro from that hat?

A. Not to my personal knowledge. He could have. I couldn't say that he didn't.

Q. Have you yourself known him to draw the name of one negro from that hat?

A. Not of my personal knowledge. No.

Q. Have you ever seen one negro serve on a petit jury actually trying a case in Dallas County?

A. No.

Q. Civil or criminal?

A. No, I never have seen one, civil or criminal.

Attorney Hall: That is all, sir.



Cross-examination.

By Solicitor Hare:

Q. Mr. Reeves, I will ask you if you have recognized the names of persons you have known to be negroes on the venire in Dallas County over a period of years?

A. Well, I will put it this way: I have seen the names of ones I thought were negroes, but I was not positive. Lots of them have the same names as white people.

Q. Have you ever seen negroes answer to the call on the venire in Dallas County?

A. Yes.

Q. Have you on occasion seen substantial numbers of those go up to the Judge and ask to be excused?

A. I have seen substantial number on the venire. Whether they went up to get excused, I don't know about that.

Q. Now, Mr. Reeves, in the selection of a petit jury in Dallas County in a criminal case, how many strikes does the defendant have with respect to those of the State?

A. The defendant has two strikes and the State one strike.

Q. Have you ever had occasion to strike the name of negroes in the selection of a petit jury?

A. I have struck names that I thought were negroes. I didn't know them, and I thought they were.

Q. Have you ever had occasion to have a negro client request that the name of some negro juror be left on the petit jury?

A. Never had.

Q. Do you do some practice in the Federal Court?

A. Yes.

Q. Have you ever received a copy of the venire from the Circuit Clerk of Dallas County in which the names of negroes were identified by any mark or lettering as such?

A. No, I haven't.

Q. I will ask you if you have ever received a venire from the Marshall of the Federal Court in Alabama where the names of those persons were identified by some mark, a "o"?

[fol. 61] A. I wouldn't want to state positively about

that. I know later on we found out by questioning people in the various counties as to whether they were negroes or white people, but as far as having it actually on the list, I don't recall.

Q. You don't recall?

A. No.

Solicitor Hare: I believe that is all.

Redirect examination.

By Attorney Hall:

Q. I heard you testify just a moment ago that you have struck the names of some because you thought they were negroes. Were you representing negroes or white people?

A. I just don't know about that. I said I struck them. I didn't know who they were. My reason for striking was I didn't know who they were, but I don't know who I represented at the time.

Attorney Hall: That is all, sir.

JAMES A. HARE, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. You are Mr. James A. Hare?

A. That is correct.

Q. What is your occupation?

A. Lawyer. Circuit Solicitor for the Fourth Judicial Circuit of the State of Alabama.

Q. That includes Dallas County, Alabama?

A. It does.

Q. How long have you been solicitor in this circuit?

A. Since July, 1946.

Q. Previous to that time, what were you doing?

A. In the army.

Q. How long had you been there?

A. Four years.

Q. Previous to that time, were you located here in Dallas County?

A. Yes.

Q. Were you engaged in the practice of law then, generally?

A. Not generally, no.

Q. Since 1946 you have been Circuit Solicitor?

A. I have.

Q. As Circuit Solicitor, it has been part of your job to go before the various grand juries from time to time in this county?

A. That is true.

Q. And to deal with them and assist in their organization, and you also prosecute for the State of Alabama before all petit juries?

A. That is true in the Circuit Court.

Q. Tell us, Mr. Hare, how many negroes have you known to serve on the grand jury of Dallas County since 1946?

[fol. 62] A. Not one.

Q. Have you been present, sir, on occasions when the grand jury was being organized?

A. I have, on numerous occasions.

Q. When the names were being drawn from the hat?

A. Yes.

Q. Have you ever known the name of a negro to be drawn from that hat?

A. I have not.

Q. Have you ever known the name of a negro to be designated and to refuse?

A. There is no such thing as designation for grand jury. The venire is called and qualified, and those persons who want to be excused come and talk to the Judge, and those who are excused are stricken from the list and those cards are pulled; and the remaining cards go in the hat. And there is no designation. Those names are then drawn by lot.

Q. Is it your experience that all negroes on the venire in Dallas County during your term of office have always been excused previous to the selection of the grand jury?

A. No, I don't think all of them have been excused. Maybe all have come and asked to be excused.

Q. Have you known of occasions when one or two hadn't been excused previous to the drawing of the grand jury?

A. I think I could recall many occasions.

Q. Have you ever known any of their names to be drawn for service on the grand jury?

A. No, I have not. If there were five on the venire and three would come up to be excused, there would be two in the hat. Out of five or six, I have never known one to be drawn.

Q. You have never known a negro's name to be drawn for service in Dallas County, sir?

A. I have not.

Q. I see. Getting back to petit juries, have you ever known negroes to serve on petit juries in this county?

A. I have not. Not in criminal cases. I am never here during civil cases. I am conducting the grand jury then, and I have no knowledge of procedure during that time.

Q. But you are familiar with the criminal cases, and you have never known negroes to serve on any jury in this jurisdiction?

A. No, I haven't. I have known their names to be on the venire.

Q. They usually are always excused or struck?

A. They are usually struck.

Q. And none ever serve on a petit jury in this jurisdiction.

A. Well, the criminal lawyers who do most of the work here have consistently made it a practice to strike them. There has been no policy, so far as the State is concerned.

Q. I see. Getting back to the fact that no negro has ever served, are you familiar with the population of Dallas County with reference to race?

[fol. 63] A. Only generally.

Q. In your best judgment, sir, what is the ratio of population?

A. About two to one. In Dallas County, about two negroes to one white.

Q. In the Black Belt?

A. Sixty to sixty-five percent.

Q. And 35% or 40% white?

A. Yes.

Q. That is in your best judgment?

A. Yes.

Q. And of that number of negroes—of negro men—in spite of the fact you have more negroes, have you ever seen a venire with more negroes' names on it than white?

A. No.

Q. Have you ever seen a venire with half as many negroes' names as white?

A. No, I don't think I have.

Q. With a third as many negroes' names as white, in your best judgment, sir?

A. Well, now, that would be limited to the venire that were serving in criminal cases?

Q. Yes, sir, criminal cases. Assuming that the venire has sixty names on it, have you ever seen one with a third of the names negroes?

A. No, sir.

Q. Have you ever seen twenty negroes' names on the venire?

A. I don't think I have. No.

Q. At any time, on any occasion, in a criminal cause?

A. No.

Attorney Hall: I see. That is all.

Cross-examination.

By Special Prosecutor Gayle:

Q. You have seen negroes' names, like all jurors are called up here and qualified, after they are qualified all of those were put into a hat?

A. Yes, sir.

Q. And negroes and white alike?

A. Yes, sir, put in the hat by the clerk.

Q. And he drew out eighteen for the grand jury?

A. Yes, sir.

Q. One at a time, out of the hat, with a handkerchief over it?

A. Yes, sir.

Q. And he drew eighteen names?

A. Yes, sir.



Q. And the names in that hat were negroes, at the same time, there with the whites?

A. Yes, sir. Yes, sir.

Q. Then, they have been on the venire?

A. Yes, sir.

Q. Mr. Hare, have you known white men to be on the venire numerous times, on numerous occasions, and never sit on a case?

A. Yes, I have known a bunch of them who come up and ask to be excused every time.

[fol. 64] Q. And they were in that hat.

A. Yes, sir.

Q. But they weren't on the grand jury?

A. No, sir.

Q. And those were white people.

A. Yes, sir.

Q. You you know of that not on one occasion, but on numerous occasions?

A. Yes, sir.

Q. And some here ten or fifteen years and never been on a grand jury?

A. Yes, sir, and I have known other persons to serve consecutively on the grand jury.

Q. Name go back in the box and be drawn again?

A. Yes.

Special Prosecutor Gayle: That is all.

Redirect examination.

By Attorney Hall:

Q. I'd like to ask you one other question, please, sir. You say you have known white people who have been on ten or fifteen years and never served on the grand jury?

A. Yes.

Q. Do you know any negroes who have been on that many venires and never served on the grand jury?

A. What?

Q. Do you know any negroes who have been on that many venires?

A. I don't say I can recall the names of any one white

who have been on fifteen venires. You know names of persons who frequently appear on the venire—I'd say once a year, almost. And it wouldn't be any fifteen times. It wouldn't be over six or seven times. But I've seen them hit pretty regularly for jury duty.

Q. But you have known men to come up here on consecutive venires who didn't serve on the grand jury?

A. Yes. I think we had one member of the grand jury several years ago who was foreman of two grand juries—wait, I'll take that back. That was in Wilcox County. I think we have had one or two men to serve on two consecutive grand juries in the county.

Q. Mr. Hare, how many negroes do you know who have been on more than two venires?

A. Well, now, I don't know. I can't say that I know too many of the negroes or the history of the county back of 1946, but in that period of time I know that negroes have stood up here at the rail and have been subpoenaed and called here for jury duty.

Q. Let's see—we are trying to get this straight in our mind. White people come up time after time on the jury list?

A. Some of them do. That is rare. That is the exception.

Q. But it is conceivable? Some may come back and back again? Assuming, of course, that you are familiar with the law, how often the jury box is filled and refilled and [fol. 65] concerning the jury commission and formation of the jury roll and the placing of certain names in the jury box?

A. Yes.

Q. Is it your considered opinion, in view of that law, that it is the jury commission's duty to know each person on this jury roll possesses all of the qualifications and none of the disqualifications set out under the Alabama law?

A. I think that is their job.

Q. Is that their duty?

A. I think it is.

Q. Now, sir, what standard and what method are they to use in ascertaining these things?

A. I have no idea about that. The jury commission in

this county is appointed by the Governor and they are responsible to the Governor.

Q. The Legislature has set out the rules?

A. Yes, but I have no supervision or authority.

Q. We are wondering what your opinion might be on this subject.

A. I think it would be primarily their duty to know people on there were qualified, and if they are not qualified I think the jury commission would not be doing its job.

Attorney Hall: I believe that is all. Thank you, sir.

County Solicitor Reese: We would like to have the privilege of recalling Mr. Hare.

The Court: All right.

JOHN P. FURNISS, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall.

Q. Your name, sir?

A. John P. Furniss.

Q. What is your occupation?

A. Public accountant.

Q. Where do you live?

A. Crescent Hill, Selma, Dallas County, Ala.

Q. That is outside of the city limits of Selma?

A. Yes.

Q. Now, have you had occasion to serve as foreman of the grand jury of Dallas County recently?

A. Yes. I was foreman of the November term, this past November term.

Q. Was that the grand jury which considered evidence against William Earl Fikes and which returned certain indictments against him?

A. Yes, sir.

Q. Those are the last indictments returned, which are 8072-8082?

A. I am not familiar with those numbers.

Q. We have a copy of the indictments, if the State has no objection. Mr. Furniss, you will observe these two

copies of indictments against William Earl Fikes, and observe the numbers of them and the list of jurors there and [fol. 66] the name, and tell us whether or not that is the grand jury of which you were foreman. (Hands indictment to witness)

A. Case No. 8082, that was an indictment that we brought as a grand jury against William Earl Fikes.

Q. Yes, sir. (Hands another indictment to witness)

A. And in case No. 8072, that is an indictment that we returned against William Earl Fikes.

Q. Thank you, sir. Now, Mr. Furniss, were there any negroes on that grand jury which returned these indictments?

A. No, there was not a negro on the grand jury.

Q. There were no negroes at all on that grand jury?

A. No.

Q. How often have you served on the grand jury in Dallas County?

A. This is the second time.

Q. Have you served on any petit juries trying either criminal or civil cases?

A. I couldn't be positive, but I think I have served on two petit juries.

Q. On the time you previously served on the grand jury, was there any negro on that grand jury at that time?

A. There was not.

Q. Were there any negroes on those petit juries on which you served, sir?

A. No, there were no negroes.

Q. I see. When was the last time you served on the grand jury, previous to this time, sir?

A. I couldn't be positive. I think it was 1938 or 1939.

Cross-examination.

By Special Prosecutor Gayle:

Q. How old are you?

A. Forty-one.

Q. How many times have you served on grand juries and petit juries, did you say?

A. To the best of my memory, I have served twice as a grand juror and twice as a petit juror.

Q. Were you present the day that the venire was called, when they formed your grand jury?

A. Yes, sir.

Q. Did you see any negroes here in Court on that venire?

A. Yes.

Q. And that was the same time the grand jury was organized by the Judge, and you saw him draw the names out of the hat?

A. Yes. I was sitting very close. I was sitting in the first seat. I was able to observe the procedure, the drawing.

Q. That was after the excuses had been taken, was it not?

A. Yes.

Special Prosecutor Gayle: That is all.

[fol. 67]

Redirect examination.

By Attorney Hall:

Q. You say that the Judge did draw the names from the hat after the excuses had been taken?

A. That is true.

Q. And did you observe negroes as members of that venire?

A. I did.

Q. Did you observe whether or not those negroes had been excused previous to the drawing of the names from the hat?

A. One was disqualified because he was a felon. He had been previously convicted of a felony, and there was one that pled his age.

Q. Do you recall when he had been convicted of that felony?

The Court: It was in Federal Court. He was from Plantersville, convicted in Federal Court about two years ago. He was down to the left and I noticed his hand held up and I called Judge Moore's attention to it. His name was Mark Sherrer, from up in the Plantersville section.

Q. And the other one?

A. There was one negro that when the Judge asked the jury were any over sixty-five, he stated that he was over



sixty-five and wished to be excused, and he was excused.

Q. And what happened to the rest of them?

A. They sat over in the court room while the names were drawn from the hat in the formation of the grand jury.

Q. Do you recall how many negroes were left?

A. I would say there were five. I couldn't be positive. I thought there were five.

The Court: His recollection is correct.

Q. I see. Now, Mr. Furniss, you do know that there were five negroes, members of that venire, and that their names went into the hat?

A. That is true.

Q. And you also know nobody was withdrawn for service on the grand jury?

A. That is true.

Q. How long have you lived in Dallas County?

A. I am a native of Dallas County.

Q. And how many negroes have you known during the course of your life to serve on juries, either grand or petit, in Dallas County during the whole of your life?

A. I have known no negroes, to the best of my knowledge, to serve on a jury in Dallas County.

Attorney Hall: No further questions. Thank you, sir.

Special Prosecutor Gayle: That is all.

The Court: We stand in recess until one-thirty.

(Court stands in recess for lunch, and then called to order and trial resumed)

[fol. 68] WALLACE HILL, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Is this Mr. Wallace Hill?

A. That is correct.

Q. What is your occupation?

A. Assistant cashier of the City National Bank of Selma.

Q. Are you chairman of the jury commission of Dallas County?

A. I am.

Q. How long have you served in such capacity?

A. In this capacity? The present commission was appointed in 1951—I think that's right—whenever Mr. Persons went in as Governor.

Q. Had you served on any previous commission?

A. About six months on the prior one.

Q. I see. During your course of service, sir, were you and the other members of the commission responsible for the preparation of the jury roll for Dallas County?

A. That is true.

Q. You did prepare jury rolls for each year you served?

A. We prepared one jury roll, that I know of, prior to this year.

Q. What year was that, sir?

A. When the present commission went in, 1951. I think that is right. Whenever Mr. Persons went in, about October of that year.

Q. About October of the year you were appointed?

A. That's right.

Q. Assuming that 1951 was the correct year, from 1951 up until October, 1953, you had only prepared one jury roll?

A. That is correct.

Q. Will you tell the Court how you and the members of the commission went about preparing that roll, sir?

A. We made up a list of names on some work sheets, which we transferred to a jury roll.

Q. Off on work sheets?

A. On work sheets.

Q. Where did you get your names from, Mr. Hill?

A. We got our names from several places: from personal contact, from the registration list, and from the city directory.

Q. You did use all of those references?

A. To some extent we used all of them. Yes.

Q. Are you the same Mr. Hill that testified on the previous hearing on the motion to quash the indictment against William Earl Fikes?

A. I was here the first of October.

Q. Do you recall the style and number of the case?

A. No, I do not.

Q. What were the results of the hearing in that particular case?

Solicitor Hare: We object. Irrelevant, incompetent, immaterial.

The Court: Sustain the objection as to what the final [fol. 69] termination was.

Attorney Hall: We note an exception.

The Court: All right, you have an exception.

Q. Have you made up another jury roll since October, 1953?

A. We have.

Q. When did you make it up, sir?

A. October of this year.

Q. What date of October, sir?

A. You can't make it up on any particular date. You have to have time on it. We made it up during the first part of October.

Q. Was it completed in October of this year?

A. Yes.

Q. What date was it completed?

A. I will say it was completed by the seventeenth.

Q. Was it completed by the first Monday of October of this year?

A. It was not.

Q. Had you begun work on it by the first Monday of October?

A. We had begun to get the names together.

Q. Do you recall the date of the hearing of the previous cause?

A. I think it was on a Monday. I think it was the fifth of October.

Q. Let's see, sir. Do you mean that on the fifth of October of this year that there was pending in this Court a cause against this defendant, William Earl Fikes, which was more or less the same cause that is now pending against him in case No. 8072?

Special Prosecutor Gayle: We object, unless he knows of his own knowledge.

Attorney Hall: We asked him if he does know.

The Court: Over-rule the objection.

The Witness: You confuse me now.

The Court: Read him the question, Mrs. Bailey.

The Court Reporter: (Reading from her notes) "Let's see, sir. Do you mean that on the fifth of October of this year that there was pending in this Court a cause against this defendant, William Earl Fikes, which was more or less the same cause that is now pending against him in case No. 8072?"

The Witness: I don't understand the question.

Q. We will put the question this way: was there being heard in this Court house on October 5 of this year certain motions having to do with indictments returned against William Earl Fikes?

A. There were.

Q. Those motions were being heard on October 5 of this year, is that true?

A. I am sure that is true.

Q. Do you recall whether or not the first Monday of October [fol. 70] fell on the fifth this year?

A. I think it did.

Q. So, on that date you were not making a jury roll.

A. We had been in the process of gathering a few names together prior to that date.

Q. Will you tell the Court when you started gathering those names?

A. No particular time. We just gather a few names and put them on a piece of paper, and when we start the roll we use them.

Q. How did you know they weren't on the roll?

A. People would come to us and say, "My name is not on the roll and I'd like to be on there", or we'd find some people who have moved to town and we put their names on the roll.

Q. How would anyone know whether or not his name was on the roll?

A. They don't know. They think so.

Q. But they do come to you and say, "My name isn't on the roll and I'd like to be on it?"

A. They say, "I haven't been drawn and I'd like to be on it." We put the names on a piece of paper, and when we have a meeting we ask if his name is on the roll.



Q. Did you or not have a meeting on October fifth of this year?

A. On October fifth of this year we were subpoenaed to be in this court house. We worked some on the roll during that time, that afternoon.

Q. Do you recall—I believe I asked you this question before. I don't mean to repeat. Do you recall what date in October you had the present roll finished?

A. I think I said the seventeenth.

Q. Now, sir, in preparing the jury roll for Dallas County, Alabama, did you consider the names of every eligible male citizen of this county between the ages of twenty and sixty-five?

A. Not every eligible male, no, we didn't consider every one.

Q. Why didn't you?

A. They are unknown to us, a lot of them.

Q. Did you list on your jury roll the names of every male citizen of Dallas County?

A. We did not.

Q. Listed in the city directory?

A. No, we did not.

Q. Why?

A. Well, one reason, we didn't know all of them.

Q. You had the city directory?

A. Sure, but a lot of them in there are not qualified jurors.

Q. Do you assume that they are not qualified or that they are qualified?

A. In some cases you know they are not qualified.

Q. Did you list all of the names listed in the city directory of Selma, Alabama, that you had no reason to believe were not qualified?

A. No, we did not.

Q. Why didn't you?

A. It is our duty to be sure they are qualified before we put them in the box—before we put their names in the box.

[fol. 71] Q. So it is a rule of procedure to assume that the male citizens of Dallas County who are not known to you are not qualified to serve as jurors?

A. No.



Q. What is the rule of presumption?

A. We have no rule of presumption. We put their names on the jury roll when we are sure they are qualified.

Q. And only when you are sure they are qualified?

A. In our own mind.

Q. Are you familiar with all of the statutes governing your office?

A. I have been exposed to them and read them.

Q. Isn't it a fact that you are charged with listing all of the names of male citizens?

A. That is in there, but there is also a section that says the omission of some names would not void the roll.

Q. We would like to know if you omitted some name for a reason and if you included some names for a reason?

A. We omitted a lot of names for a reason.

Q. Were you familiar with all of the names you omitted?

A. No.

Q. Did you know them by reputation?

A. No.

Q. Did you have reason to believe they were unqualified to serve?

A. A good many were exempted from serving.

Q. Did you have reason to believe they were not qualified or exempted from service?

A. I can't answer that question. I am confused here myself as to what we are driving at.

Q. You are chairman, and did meet this past October and consider these names?

A. That's right.

Q. And did you place on this new roll a certain number of the male citizens of Dallas County?

A. That is true.

Q. Are all of the names on this roll between twenty-one and sixty-five qualified to serve?

A. We think so.

Q. Is it not a fact that some among them are not qualified?

A. If they are, we don't know it.

Q. Don't you know that one on there was not qualified by reason of the fact he was a felon?

A. We didn't know it at the time.

Q. Didn't you know there was another who might be exempt because he was over the age of sixty-five?

A. I heard that.

Q. So that a number of the names on this roll are not qualified or exempt?

A. That is possible.

Q. Why didn't you list every male citizen over the age of twenty-one?

Solicitor Hare: We object to that. There is nothing in the law that directs him to do that. The question is improperly framed. I object to the question.

[fol. 72] The Court: Sustain.

Attorney Hall: We would like to take exception to your Honor's ruling.

The Court: You have an exception.

Q. Your commission has a clerk?

A. It does.

Q. Does your clerk visit in the precincts once a year?

A. We have just recently gone into the fact that she should.

Q. Did she do that before making this roll?

A. No, sir.

Q. Doesn't the statute direct her to go out there and ascertain who might be qualified for jury duty?

A. It does.

Q. So that as a matter of fact you did not have the benefit of your clerk's research in Dallas County previous to making up this jury roll?

A. Not the entire county.

Q. Who did you take care of, what particular portion? What did you do to make up for it?

A. We asked the reputable people within the precinct boundaries to help us, in that manner.

Q. Please explain, sir.

A. We asked persons that we knew, who lived in certain precincts, if they would help us in selecting qualified jurors.

Q. Did you ask them to help you get all of the names of jurors, or did you leave it up to them who might be qualified?

A. We told them to get us the names they thought would qualify.

Q. The persons you asked were not members of your commission?

A. They were not.

Q. Yet you delegated to them the responsibility and the duty to determine whether or not persons who lived in their precinct were qualified.

A. We did not delegate that to them. We asked them to submit names to us that they thought were qualified.

Q. You definitely told them to submit only the names that they thought were qualified?

A. That is right.

Q. Tell us, on your previous jury roll—I think you examined the roll in the previous hearing, case No. 8809?

A. I am not familiar with the number, but it was in October.

Q. Is that the jury roll which your commission had made up?

A. It was.

Q. How many negroes were you able to identify on that roll?

A. I don't remember.

Q. Do you think, sir, that you could identify any persons on this roll as being negroes?

A. I am not sure that I could.

Q. I show you this book marked Exhibit A, which is Defendant's Exhibit A, and purports to be the jury roll for [fol. 73] Dallas County, Alabama, for the year 1951 to '53, and ask you to examine it, sir, and point out to us the names of persons you know to be negroes.

The Court: Mr. Hill can take the book and retire to the jury room, and we will start with the next witness.

Attorney Hall: This is off the record—(not recorded).

Q. You only found three names that you could identify as colored?

A. Right.

The Court: On what page, in what precinct, and what exhibit?

Attorney Hall: Exhibit A, on page — there is no page number, on one of the pages for Precinct 36, the names of

William Boyd, Benjamin H. Bender and Ned Braxton written in pencil were the only ones which Mr. Hill could positively identify as being negroes:

Q. So that to all intents and purposes, up until October, 1953, there were only three negroes on the jury roll of Dallas County, Alabama, that you knew?

A. In that present roll.

Q. That was the jury roll for Dallas County at that time?

A. That's right.

Q. On up until October, 1953, of this year, 1953?

A. That's right.

Q. And since that time you have made a new jury roll, is that true?

A. That is true.

Q. Do you know how many negroes there might be on the new jury roll?

A. I'd say at least 250.

Q. What leads you to believe you have that many on there?

A. We took a rough count on them at that time.

Q. How did you tell they were negroes?

A. We asked about them.

Q. You asked about them before or after you put them on there, sir?

A. We asked about them before we put their names on the roll.

Q. Let's see, sir, if we can follow you. In making up your new jury roll sometime in October, 1953, how did you go about making up that roll?

A. Well, as I explained before, we used personal contacts, the city directory, the telephone book, and personal knowledge.

Q. All right, sir. Personal contact. Do you mean that you used personal contact in order to ascertain all of the names on there?

A. Oh, no.

Q. To what extent did you use personal contact?

A. I don't know to what extent. Just persons that we knew and came in contact with in everyday life.

Q. To what extent did you use the city directory, sir?



A. Well, we went through the directory.

[fol. 74] Q. For what reason?

A. We wanted names for this jury roll.

Q. You didn't use all of the names in the city directory?

A. No.

Q. Why not?

A. A lot were exempt.

Q. How could you tell who was exempt? What we are trying to do is trying to find out how you go about making up your jury roll.

A. We don't know all of those people by name.

Q. Why didn't you use every male name in the city directory of Selma?

A. For the reason there are a lot of conditions we are unsure of. We don't know whether they are over sixty-five or if they have been convicted of a felony.

Q. So that all you did use you know their moral character?

A. We know of it. I presume we know of it, or some member of the commission knew of it.

Q. So, as a matter of fact, you are not sure of the moral character of the names on your jury roll.

A. To a great extent, we are. You asked me was I sure of all of them personally. I don't know them all. I said that some members of the commission would know those I don't know.

Q. But the commission as a whole you feel is sure of the moral character of every name on this book?

A. That's right.

Q. And you are sure of the qualifications of every man on this roll to serve as a juror?

A. As far as we know.

Q. Which is marked Exhibit X, and purports to be the jury roll of Dallas County, Alabama, compiled October, 1953. I mean, not you personally, but you as chairman of the commission feel that you can be sure that every name on this roll possesses all of the qualifications and none of the disqualifications set out by the statute of the State of Alabama?

A. Yes, until we are shown different.

Q. To what extent did you use the telephone directory



in ascertaining whose name should be placed on this roll? What was its purpose?

A. Well, the telephone directory, I used that book personally. I know it was used.

Q. Why did you use it?

A. I was particularly interested in getting the names of people in a certain precinct.

Q. Just how would you use the telephone directory in trying to get the names of people in a certain precinct?

A. Go by the address.

Q. I assume you already had the names?

A. Not necessarily.

Q. You just went through the directory, name by name and page by page?

A. That's right.

Q. How did you go about listing the 200 or 250 negroes whom you say are listed in this book?

A. Some from the city directory, and some were obtained from these gentlemen who helped us gather names for qualified jurors.

[fol. 75] Q. I assume, then, when you put them on the roll you knew they were negroes?

A. At one time we did. I don't know that I could pick them out on there now.

Q. At the time you put them on there, at the time you were making up the jury roll, did you know they were all negroes?

A. Yes.

Q. Did you put them on there because they were negroes?

A. Not in every case. They were qualified jurors.

Q. Let's see if I follow you, sir. Does your commission set out to put a certain number of negroes on that roll?

A. No certain number.

Q. How did you go about it, to put negroes on it at all? Now, you only had three on the previous roll.

Special Prosecutor Gayle: We object to that. He said he only knew of three.

The Court: Sustain the objection, because Mr. Hill testified he could only identify three.

Attorney Hall: We didn't intend to confuse the witness.

Q. Now, to your knowledge, there were only three negroes on the previous roll?

A. That is true.

Q. And how do you know or why do you know that there are at least 200 or 250 on the present roll?

A. Well, during this last hearing, if I may bring that up, it was more or less brought out that there were not many negroes on the jury roll. The commission thought they should rectify that matter, and they went about it, trying to do so.

Q. So what did you do, Mr. Hill?

A. We made a specific point of trying to include qualified negroes in our jury roll.

Q. How did you go about doing that?

A. We asked prominent men within the community to offer to us the names of qualified negroes to be placed in the box.

Q. Let's see if I understand you, sir. You went to prominent men in the various communities and asked them to give you the names of some qualified negroes?

A. We didn't specifically say negroes, we said qualified people including negroes.

Q. You did not say, "Give us the names of some qualified negroes", but you said, "qualified people, including negroes"?

A. That's right.

Q. And now, after you had gotten these names, how did you go about ascertaining how many you had that were negroes?

A. You mean names they had given us?

Q. Yes, since you had made no particular effort to get negroes as such.

A. We asked people to designate on the list given us the names of those who were negroes.

[fol. 76] Q. You went to prominent men in the various communities and asked them to give you the names of qualified citizens in their communities who could serve as jurors and whom you could list on your jury roll, and you asked them to set out and specify which of those names were white and which were colored?

A. That's right.

Q. I see. And having gotten this list, you included those names on your jury roll?

A. That's true.

Q. So that you can be fairly well certain of the number of negroes you have on the jury roll.

A. That is true.

Q. I see. Do you designate the persons on your roll by some symbol or anything to set out whether they are white or colored?

A. We do not.

Q. Do you know the total number of names you have on the present jury roll?

A. I'd say between fifteen and sixteen hundred names.

Q. Do you recall the number you had on the previous roll?

A. Not exactly. I think it was around 1,300. I am not positive.

Q. I see, Mr. Hill, do you think you could go through the list and determine which of these persons were negroes?

A. Not in all cases.

Q. Are all of the persons whose names are on this roll in the jury box?

A. They are.

Q. All of them?

A. They are, except those who have been pulled for service.

Attorney Hall: Your Honor, please, may we have the jury box?

The Court: Mr. Sheriff, bring the jury box in, please, sir.

(The sheriff leaves the court room to get the jury box)

Q. In your best judgment, what proportion of these negroes do you think you could identify?

A. I don't know. Particularly within the county, there are some of them that I don't know personally.

Q. Did I understand you to say that these names were given to you on work sheets or lists?

A. That's right.

Q. Does your commission have those lists in its possession?

A. I don't know. I think most of those lists were destroyed.

Q. Do you think you could identify at least half of those names of negroes?

A. I could try.

Q. We don't want to take up your time unless you could identify half or at least half.

A. I think I could.

Q. We show you this book, purporting to be the jury roll for Dallas County, Alabama, compiled October, 1953, which is marked Defendant's Exhibit X, and ask you to examine the names written in that book and point out for the Court, if you please, which of those names are those of colored people—or as many as you can.

A. You want to go through this entire book?

[fol. 77] Q. Yes.

The Court: I prefer letting Mr. Hill retire to the jury room.

The Witness: How do you want me to do this? Mark the roll?

The Court: No, sir, don't mark the roll. I will give you a pad of yellow paper that you can take with you and mark the page or precinct they are taken from.

(The Court hands pad to the witness.)

The Witness: What do you want on this?

Attorney Hall: Just the number of negroes, if you ascertain them by precincts.

(Witness leaves the court room with Exhibit X and pad.)

C. C. THOMAS, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Are you Mr. C. C. Thomas?

A. That's right.

Q. What is your occupation or profession?

A. Druggist.

Q. Is your place of business located in Dallas County, sir?

A. Yes.

Q. In the City of Selma?

A. Yes, sir.

Q. How long have you lived here?

A. Forty-two years.

Q. Are you a member of the jury commission of Dallas County?

A. I am.

Q. How long have you been a member of such commission?

A. I was appointed by the present Governor in his first year.

Q. That was in 1951?

A. Yes.

Q. And you are still serving at a member of that commission?

A. Yes.

Q. Mr. Thomas, how many jury rolls have you prepared or helped to prepare as a member of the jury commission of Dallas County, sir?

A. Only two.

Q. Do you recall when you prepared your first one, sir?

A. At our first meeting that year.

Q. In 1951?

A. Yes.

Q. I see. Do you recall, sir, how many negroes were included on that roll?

A. I think there were thirty-five or forty. Let me clear myself. ~~I am~~ I am not sure whether we prepared a roll or whether we went on with the roll and box as was, and added names to that box. I am not positive about that.

Q. I'd like to show you this book, marked Exhibit A, purporting to be the jury roll for Dallas County, Alabama, for the years 1951 up until '53. Now those are the years [fol. 78] during which you served as a member of the jury commission?

A. Yes.



Q. And I will ask you if you remember examining that book sometime previously?

A. I do.

Q. Do you recall when it was?

A. At the last trial of the defendant here.

Q. Do you recall the date, Mr. Thomas?

A. No. I think it was in September, wasn't it?

Q. You think it was in September. But it was in the cause of the State of Alabama against William Earl Fikes?

A. That's right.

Q. When the defendant was arguing certain motions going toward quashing the indictment because of irregularities in the constitution of the grand jury and petit jury of Dallas County at the time. Do you recall how many names you could identify on that book as being those of negroes?

A. Only identified two in the district that you requested that I identify them, as I remember.

Q. Do I understand you to say that you could only identify two names on this roll as being those of negroes?

A. No, I think it was Precinct 36.

Q. You didn't go through the whole roll?

A. Wasn't asked to. No.

Q. It is your impression, then, that this roll included the names of thirty or thirty-five negroes, is that true?

A. That's my impression. That is, as I remember it, I said at the time there were thirty or thirty-five.

Q. On what did you base that?

A. Having gone through the cards in the box.

Q. Do you recall that there were certain cards in the box containing names of persons whose names were not on the jury roll?

A. I think that is true.

Q. And you also know, as a member of the commission, that you are to first make the roll and then make the box. Is that true?

A. That is what we did this year, and it is not clear what we did about it in '51.

Q. So that, as a matter of fact, you have no reason to believe there were thirty or thirty-five negroes on that roll?

A. There were thirty or thirty-five cards in the box.

Q. But not necessarily on the roll?

A. I don't know.

Q. I see. I believe your commission has met sometime lately and made a new jury roll for Dallas County. When was that?

A. Our first meeting was October fifth.

Q. October fifth?

A. Yes.

Q. What time was that? Do you recall the time?

A. The time of day?

Q. Yes.

A. I think it is usually three o'clock in the afternoon. I [fol. 79] work until two, and have lunch and come back.

Q. Was the case of the State of Alabama versus William Earl Fikes being heard at that time in this court room?

A. I don't know.

The Court: You mean the motions filed on behalf of William Earl Fikes?

Q. Do you recall his Honor was hearing testimony on the motions which had been filed to quash the indictments against William Earl Fikes on October fifth?

A. I don't think so, but I am not positive.

Q. Do you recall, sir, where your commission met at that time? Do you recall?

A. We usually met in this room over here to the left.

Q. If those motions were being heard at that time, would you have known it?

A. I don't know whether I would or not.

Q. You don't know? Do you recall, as a matter of fact, what date you testified in the previous hearing?

A. No. That is a matter of record here in the court house.

Q. You don't know whether it was October fifth or not, do you?

A. No.

Q. Do you recall what day October fifth fell on this year?

A. No.

Q. Was it the first Monday in October of this year?

A. I don't know—I don't remember.

Q. On what date did you have the jury roll completed? What date in October?

A. We worked about three or four times after the fifth. It was along about the fifteenth or seventeenth.

Q. When you say you worked about three or four times, do you mean you had meetings?

A. Yes.

Q. I see. And did you type up the jury roll at that time?

A. No, we don't type up the roll.

Q. How do you go about that?

A. We employ a clerk to type it up.

Q. What does the commission do during its meetings? Just meet and write down names or compile lists or what, sir?

A. When we make up a tentative list and agree on it, the president of the commission employs someone to write up the roll and the cards.

Q. Do you have any judgment or any opinion as to how many negroes are on the present jury roll for Dallas County, Alabama?

A. Between 275 and 300.

Q. Do you have any opinion as to why so many are on the present roll?

Special Prosecutor Gayle: We object to that.

The Court: Over-rule.

Q. Answer, please, sir.

A. Well, there are good many things that enter into the qualifications of a citizen to qualify as a juror: his environment in which he lives, the question of venereal disease—

Q. Just where would venereal disease fit in?

A. In the effect on those born of one infected with it.

Q. All of this must be considered in determining the qualifications or disqualifications of a juror?

A. That is my understanding.

Q. Go right ahead.

A. And illegitimacy. That is considered.

Q. Yes, sir. What else, sir?

A. I think that about covers it.

Q. The question, Doctor, which I didn't quite understand you to answer, was if you had an opinion as to why

there are between 275 and 300 negroes on the present jury roll, compared with the thirty or thirty-five on the previous jury roll.

A. Well, I don't know that I have. We made a very close study of the situation as we found it after the other trial.

Q. When you say "close study", sir, what does that entail? Would you mind telling us just what the commission did?

A. Well, first, to get these names, we took qualified voters lists and then the city directory, telephone directory, and we contacted men we felt were competent to assist us with names of men competent to sit on the jury that lived in various parts of the county.

Q. Did you list all of the names of men in this county on the jury roll?

A. No.

Q. Why didn't you?

A. List every man in the county?

Q. Yes, sir.

A. No, I didn't know that was required.

Q. What men did you list, sir?

A. We listed about 1,500 in all.

Q. How did you arrive at that figure?

A. We thought that was sufficient for the requirements of the Court.

Q. Let me understand you, Doctor. After you reached 1,500, you thought that was enough, is that true?

A. Yes.

Q. And you just stopped there?

A. Yes.

Q. I see. Doctor, in your best judgment, sir, what is the male population of Dallas County?

A. Well, I don't know. I think it is six or seven thousand. I am not sure of that.

Q. Does that include white and colored males of every age?

A. Of every age.

Attorney Hall: At this time we would like to ask the Court to take judicial notice of the figures which are part of our pleading as to the fact that at the time the grand

jury returned the indictments against William Earl Fikes, according to the Seventeenth Decennial Census of the population of the United States, its Territories and Possessions for the year 1950, published by the United States Department of Commerce, Bureau of the Census, of which the [fol. 81] courts of Alabama take judicial notice, the white male population of Dallas County, Alabama, between the ages of twenty and sixty-four years numbers 5,583, and that the negro male population between the ages of twenty and sixty-four years numbers 6,772; and further, that the total white male population over the age of twenty years numbers 6,200, and that the total negro male population over the age of twenty years numbers 8,200. If your Honor please, if the Court will take judicial notice of those figures, without requiring us to—

Solicitor Hare: (Interrupting). That is all right.

The Court: Yes, sir.

Q. According to the census of the United States, as last compiled, there are 14,400 males in Dallas County qualified to serve as jurors—

Solicitor Hare: (Interrupting) We object to the question.

Attorney Hall: By virtue of age.

Solicitor Hare: He said qualified to serve on juries.

Attorney Hall: If your Honor please, I think the State got me too quick. Added to that, by virtue of age.

Q. The total male population of Dallas County is 14,400. You are aware that that is a fact?

A. You just told me.

Q. And now, out of that total number of male names, the commission on which you serve determined that 1,500 of that number would be sufficient for the purpose of this Court. Is that true?

A. I don't know how we arrived at it—state your question again.

Attorney Hall: I will ask you to read that.

The Court Reporter: (Reading from her notes) "And now, out of that total number of male names, the commission on which you serve determined that 1,500 of that number would be sufficient for the purpose of this Court. Is that true?"



The Witness: We determined that, yes.

Q. All right. Now, Doctor, how did you go about determining what negroes to put on the jury?

A. The same way we went about getting white people.

Q. How is that?

A. By contacting people and swapping knowledge between ourselves, from the city directory and voters list, and then by personal contact.

Q. Am I to understand that you didn't know whether you were putting negroes on there or white people?

A. No, I think we knew.

Q. How did you know that you were adding negroes?

A. Just by—well, in the directory, I think it is designated.

Q. Does the city directory designate whether or not a person is colored or white?

A. Yes. And then we depended on people that knew them. I couldn't identify this negro or that negro on the roll. We took the word of competent people.

Q. When you say "competent people", what do you mean?

A. People well enough acquainted with them to know their competency.

Q. How did you determine who would be well enough acquainted with negroes to determine they would be qualified to serve as jurors?

A. People in their community. They know pretty well the reactions of colored people in their communities.

Q. Do I understand you to say that you went into the various beats and precincts and contacted people? How did you do that, sir?

A. As I would meet them here in town or out in the country. I didn't go out for that particular purpose.

Q. From the fifth of October through the seventeenth of October, during the course of your meetings here and the compiling of this jury roll, you had time to meet in town persons who gave you various names? You made no definite effort to get these names?

A. You can call it definite or not.

Q. Did you go to people and ask them to give you a list of names of negroes?

A. Yes, negroes and whites that are capable of serving on the jury.

Q. So you told these people you wanted people who were capable of serving on the jury?

A. That's right.

Q. The people you went to, were they members of the jury commission?

A. No.

Q. How did you determine they were capable of determining who was capable of serving?

A. In a lot of cases we told them.

Q. So you deputised them?

A. No.

Q. How did you know the exact number of negroes you have on the jury roll, to within a few?

A. The same way we would know how many whites were on there.

Q. Does that mean at the time you compiled that roll you knew which were white and which were colored?

A. Yes.

Q. How did you know?

A. We had the names so we would know.

Q. Doctor, you correct me if I am wrong. The members of the commission themselves set out and listed the names of certain negroes that you knew?

A. That's right.

Q. And then asked responsible persons scattered throughout the county to submit names of negroes that they felt were qualified?

A. That's right.

Q. And in this way you got the names of the negroes who [fol: 83] are included on this roll?

A. Yes.

Q. At the time you put their names on the roll, you knew they were negroes?

A. Yes, sir.

Q. There was no doubt in your mind as to whether they were white or colored?

A. That's right. And if they hadn't been honest men we wouldn't have asked them.

Q. I see. You say that it wouldn't be any use of your

examining the roll, because you wouldn't know whether they were colored or white?

A. I don't think I could pick them out.

Q. Would you know whether or not they were thieves?

A. By reputation I would know they weren't thieves, and by recommendation.

Q. But you had to depend upon the recommendations of the men you asked in the various communities?

A. I wouldn't be competent to pick 1,500 men in this county without help.

Q. Does your commission have a clerk?

A. Yes.

Q. Did you have a clerk in October, 1953?

A. Yes.

Q. What are that clerk's duties?

A. She meets with the commission and keeps the minutes of the commission.

Q. What else?

A. And I think we could call on her to go with us or make contacts.

Q. Do you call on her to go with you and make contacts?

A. We have not as yet. She was only elected in October.

Q. Of this past year?

A. Yes.

Q. You didn't have a clerk previous to October?

A. No.

Q. What is the name of your clerk?

A. Mrs. Houston.

Q. At the time that certain motions were heard in this Court in September with reference to indictments then pending against William Earl Kires, in case No. 8009, was Mrs. Houston the clerk of the jury commission?

A. She was employed just for a time. She was not permanently elected until October.

Q. Was she acting as clerk then?

A. Yes.

Q. Had she been acting for sometime previous to that time as clerk?

A. Well, I don't recall how many times she did act.

Q. Do you recall whether or not Mrs. Houston was subpoenaed as a witness in those hearings?

A. She testified in that case back there.

Q. And you are now saying, sir, at that time she was not the clerk of the jury commission of Dallas County?

A. She was not permanently employed like she is now.

Q. So, up until October of this year she was acting merely?

A. Yes, on call.

Q. And how was she paid then? By the job?

A. So much a day.

[fol. 84] Q. And she got no regular salary as clerk? Just paid by the day, and no monthly salary?

A. No.

Q. Has Mrs. Houston—did she in October of this year visit any precincts or all of the precincts in this county?

A. Not to my knowledge.

Q. Has she compiled a list of all of the male citizens of Dallas County over the age of twenty years?

A. Not to my knowledge.

Q. How long have you lived in Selma?

A. I believe I told you forty-two years, a few minutes ago.

Q. I am sorry if I repeat. Forgive me. Do you have a wide acquaintance among colored people?

A. I think I do.

Q. I believe you are in the drug business?

A. That's right.

Q. Do you have a fairly large clientele among colored people?

A. Yes, in a retail way, but they don't have many accounts and I don't know their names.

Q. Do you think you would be pretty well acquainted with the negroes who live in Selma?

A. I know them all by their faces, but I don't think I could call so many names.

Q. Can you tell us whether or not you have an independent recollection of the names of any negroes who live in Selma who are listed on the jury roll of Dallas County now, sir? If so, approximately how many?

A. No. No.

Q. Without going through the roll?

A. No, I don't think so.

Q. As I understand it, you commissioners do rely on personal contact to a large extent in building the jury roll?

A. Yes.

Q. So I was merely asking you as a commissioner if you had relied upon your personal contacts to include some on the jury roll.

A. Well, to some extent. We discussed them, the three jury commissioners. When we came upon a name, we would discuss it and if some member of the commission knew him well enough to recommend him he was accepted, or he was passed until we got further information.

Q. He has to get some means of getting into the discussion. One method you used was personal contact?

A. Yes.

Q. And another, the city directory and telephone directory?

A. Yes.

Q. And some reputable person to supply his name?

A. Yes.

Q. And I assume that on your first method, personal contact for some of your jurors, I assume that Selma is your largest area and most of your intelligent negroes would live in Selma, and so you might have some recollection of negroes you yourself may have suggested as being qualified?

A. I can't say that I do.

Q. So that so far as you know, you did not suggest the name of a single negro living in Selma?

[fol. 85] A. I am satisfied that I did, but I wouldn't attempt to name them here.

Q. I see. Sir, were you present at the time the jury box was filled?

A. Yes.

Q. Can you state every name listed on the jury roll of Dallas County for October, 1953, was put on a card and had been put in that jury box, except those that have been drawn for service?

A. Yes, they were listed and put in the box.

Q. Can you, as a member of the jury commission of the City of Selma, say that you put only the names of persons you knew to be qualified to serve on the jury roll of Dallas County?



A. And those recommended by someone else.

Q. So that if they were recommended by someone else, the commission went no further into the list?

A. We always studied the list. We didn't do too much about the ones we asked for out in the county.

Q. As a matter of fact, the city directory for Selma does not include the names of persons living outside of Selma?

A. No.

Q. So you could not rely on the city directory for any names but those who lived in the city of Selma.

A. That's right.

Q. And for the other precincts and beats you would have to rely on other sources?

A. Yes.. Not altogether. We know a lot of people in the county, but for the majority we would have to have help.

Q. Doctor, how many persons would you say, in your best judgment, who are over the age of twenty and under the age of sixty-five who live in Dallas County, Alabama, are qualified to serve as jurors in this county?

A. Well, that's a big question. I don't know how many are qualified.

Q. Do you think it would be more or less than the 1,500 listed on the jury roll?

A. I feel sure it would be more than 1,500.

Q. Do you think it would be 3,000 out of 14,000?

A. It is possible.

Q. Do you think you might have half of that 14,000?

A. I don't think so.

Q. So it is your personal opinion that at least half of male citizens in Selma, over the age of twenty in Selma, are not qualified to serve as jurors?

A. Did you say Selma or Dallas County?

Q. That was my mistake. Dallas County.

A. That's right.

Cross-examination.

By Solicitor Hare:

Q. The statute excludes a great many persons from jury service, doesn't it?

A. Yes. School teachers, lawyers and doctors and undertakers and pharmacists—(voice trails off vaguely)

[fol. 86] Q. So when you exclude that group from, say, 50% of the male population between twenty and sixty-five as eligible—and when you exclude the exempt list you would cut down the figure considerably.

A. Yes, that's right.

Q. And that excludes teachers, too?

A. Yes, sir, school teachers.

Q. You said that in your best judgment there were 250 to 300 names of male negroes on the jury roll of Dallas County for October, 1953?

A. That's right.

Q. Now, Doctor, the venire that was drawn for the November session of Court, 1953, that was drawn from what jury box and what jury roll, Doctor?

A. This present term of Court?

Q. The civil session of Court that preceeds the criminal session.

A. This box was completed October 17th, and I presume they were drawn from this box.

Q. Your were present when the box was filled?

A. Yes, sir, but I was not there when they were drawn.

Q. You would normally assume they were drawn from that box?

A. That's right.

Q. And I will ask you if the names of all persons on the new jury roll for 1953, if their cards were made and put in the jury box?

A. Yes.

Q. And it was from that jury box that the venire was drawn for the November session of Court and for the present venire, for the first week of December?

A. Yes, sir.

Q. Now, Doctor, normally the law required the jury commission to make up a jury roll each year?

A. Yes.

Q. And while you were on the jury commission, do you know whether that was always done or not?

A. I don't think we did it until October of this year.

Q. And Dr. Thomas, is it or not true from 1951 until you made up this new jury roll, did you all make up any supplemental list of persons?

A. I think we did, and put the cards in that box. But I don't think they were entered on the roll.

Q. Since you have been a member of the jury commission, can you say that the jury roll at any time exactly reflected the names of persons who were in the box?

A. I am sure it didn't.

Q. As a matter of practice, you all would make up supplemental lists and put the names in the box and they were not entered in the roll?

A. That is right.

Q. In your best judgment, approximately, the names of how many negroes were in the jury box for the years 1951 through 1952?

A. I imagine there were thirty-five or forty.

[fol. 87] Solicitor Hare: That is all.

The Court: We will take a few minutes break.

(Court stands in recess for a few minutes, then called to order and trial resumed.)

---

KENNETH M. HARPER, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. Is your name Mr. Kenneth Harper?

A. Yes.

Q. What is your occupation or profession?

A. Farming.

Q. Where do you live?

A. On the Old Orrville Road.

Q. Is that in Dallas County, Alabama?

A. In Dallas County.

Q. How long have you lived in Dallas County?

A. Fifty years.

Q. Are you a member of the jury commission of Dallas County?

A. Yes.

Q. How long have you served as such commissioner, sir?

A. Since I was appointed by the present governor when he took office.

Q. Would you say since 1951, sir?

A. If that was the time he took office. I was appointed right after he took office.

Q. How many jury rolls have you assisted in preparing since you have been on the commission?

A. Two.

Q. When was your first jury roll prepared?

A. Soon after we were appointed.

Q. Do you recall when that was?

A. Late winter or early spring of that year.

Q. And when did you prepare the other roll?

A. October of this year, the first of October. We started the first of October and through the month of October we worked.

Q. You started on the first of October?

A. Not the first day, but in the first week of October.

Q. Was it during the hearing of motions to quash the indictments then pending against the defendant in this case?

A. Yes.

Q. Did you testify as a commissioner in that hearing, sir?

A. Yes.

Q. During the course of those hearings the commission was then meeting preparing a new jury roll?

A. Not during the course of the hearing.

Q. Do you recall, sir, what date?

A. I don't know what date it was, but after Court. We didn't work on it until after Court.

Q. At night, after the hearing?

A. Yes.

Q. But the hearing was going on during the day in this Court?

A. Yes.

[fol. 88]. Q. I see. Now, do you recall the approximate date that your new roll was completed?

A. Not the exact date. We have signed it, and it was in the month of October.

Q. You don't recall approximately? The middle of the month, the last of the month?

A. Well, our records will show we officially approved it on a said date in October, by the minutes of our meeting. I can look on the record and see.

Q. Now, Mr. Harper, in your previous testimony in this Court on motions then pending, being heard to quash the indictments then pending against this defendant, William Earl Fikes, did you testify with reference to the number of negroes on the jury roll?

A. Yes.

Q. What was your testimony?

A. As I remember it, between thirty and forty.

Q. You recall that to be your testimony?

A. Yes.

Attorney Hall: If your Honor please—we will reserve that until later.

Q. Mr. Harper, what is the number of negroes on the present roll?

A. 250, or maybe a few over or under that. Approximately 250.

Q. How can you be so certain?

A. Because we counted them ourselves.

Q. When did you count them?

A. In the middle of November.

Q. Let's see, now. That was after you had made your new roll?

A. Yes.

Q. You didn't count them before you made the roll?

A. No.

Q. How did you know they were negroes?

A. Well, we knew the names. The three of us, working it up together. We went through the cards, and every card in the jury box is on the jury roll.

Q. When did you fill the jury box?

A. In October.

Q. After filling the box in October, then you went back and took the cards out of the box?

A. We do that frequently.

Q. And went through the cards to ascertain what names were in the box?



A. That's right.

Q. Then you determined how many of those names in the box were negroes and how many whites?

A. Yes.

Q. How many whites did you have?

A. About 1,500.

Q. You had 1,500 whites and 250 negroes?

A. Yes.

Q. You didn't know in October how many of those people were negroes, did you?

A. We just knew we were trying to get as many substantial ones as we could get to put in there.

Q. You mean substantial negroes?

A. Yes. We tried to get names from every source we possibly could, of negroes that would be material for [fol. 89] the jury box.

Q. How did you go about it?

A. Asking different ones over the county—store-keepers here, and people that were familiar with them, and the assistance of negroes in the city.

Q. Which negroes in the city?

A. Mark Thomas and Rev. Brown or Jeff-Davis, Presbyterian minister.

Q. Those are the ones you asked?

A. Yes.

Q. They submitted names?

A. They have not as yet. They said they would.

Q. They didn't submit any of that 250?

A. No.

Q. How did you get those?

A. In my neighborhood, I asked the different ones in my beat if they knew of any negroes whose names we could use in the jury box.

Q. When you say you asked the different ones, what do you mean?

A. Well, there is a store in my neighborhood. I went to the storekeeper and asked him if he could furnish me with the names of any negroes we could put in the jury box. And we asked different men. We didn't know any of them.

Q. These people you were asking in your neighborhood, were they all white?

A. Yes.

Q. You asked no negroes in your precinct?

A. No.

Q. And did the storekeepers and others questioned supply you with names?

A. Yes.

Q. Were you yourself familiar with the names they supplied?

A. Yes, and those they supplied are on the jury list.

Q. How many in your precinct?

A. I couldn't say.

Q. How many did you know personally?

A. Not but three that I could say—off-hand I couldn't say.

Q. Now, in going through the jury box in the middle of November, you were able to ascertain which of those were negroes, which were colored and which were white?

A. That's right.

Q. Could you do that today?

A. Not by myself.

Q. But you and the rest of the commission could do it?

A. I think so, the three of us.

Q. Do you think, sir, that the three of you could do it separately and apart from each other, that you could determine those you knew and Mr. Hill could determine those he knew and Dr. Thomas could determine those he knows?

A. Well, I think we might, yes. We had to take other vouchers for these, because we didn't know them.

Q. This is what I am trying to get at: I believe you testified that sometime in the middle of November you and the other commissioners took the cards out of the box and [fol. 90] counted those that were negroes, and you testified positively there were 250, more or less, and we asked you—

A. (Interrupting) And I think the three of us could get together and take the 250 out now.

Q. But you would have to be together? You couldn't do it individually?

A. We would come close to picking out the 250 that way.

Q. Separately?

A. Yes.

Q. I see. Getting back to our first jury roll, sir, that one compiled for the years 1951 through 1953, I show you this book marked Exhibit A, which purports to be the jury roll for Dallas County, Alabama, for the years 1951-1953. I believe it is the first one compiled by your commission?

A. Yes.

Q. And we ask you if you will examine this book and turn to the precinct in which you live, and tell us if there are any names here which might be those of negroes?

A. (Witness steps down and examines book, Exhibit A) There are not.

Q. Not a single one, sir?

A. No.

Q. As I understand it, you helped compile this roll?

A. Yes.

Q. Do you recall why you didn't include any negroes at that particular time?

A. I don't know that I felt there were any there capable to serve.

Q. Did you feel there were some in October of this year?

A. Well, with the assistance of others, and they thought they were. And I am not sure they are.

Q. You are not sure they are?

A. No.

Q. But you did include them at this time?

A. Yes.

Q. You have some grave doubt?

A. I do.

Q. What is that based on?

A. I don't know them that well, and doubt that they are capable of coming here and trying evidence and bringing in a verdict according to the evidence.

Q. Why do you feel they may not be capable, sir?

A. Well, I am not familiar with their education or their moral background. The others thought so, and I was willing to accept their names and put them in there.

Q. Your precinct is twenty-five?

A. No, twenty-three.

Q. And there are several pages of names here (indicating in Exhibit A)?

A. About two and a half page, probably fifty names.

Q. For Precinct 23, all of those names are white names?

A. Yes.

Q. Do you feel they are all qualified to take evidence and weigh it?

A. Yes, I know them pretty well. There are a lot more in Union Beat that are not in that box.

[fol. 91] Q. Those in Union Beat and not in the jury box or on the jury roll might be qualified to serve?

A. Might, but we don't know them all.

Q. I take it, sir, that you don't list persons for jury duty unless you know them personally?

A. I wouldn't say every one personally, but we try to get them that we know are people of some character and background before we put them in there.

Q. What method do you use, other than your personal knowledge, in determining those to serve as jurors? What method do you use in compiling your jury roll for Dallas County, other than personal knowledge?

A. Any source we can get. Sometimes make a note in our pocket. Somebody will say something to you about a certain person that ought to be in the box or that ought not to be in the box.

Q. Do you use any other method?

A. What do you mean?

Q. We assume that you are not personally acquainted with every male citizen of Dallas County?

A. I am not.

Q. And the other commissioners probably are not either, and the three of you collectively are not, so that it might be necessary for you to have some reference work. We wondered what other method you might use in getting names of citizens.

A. We ask different ones in different beats to assist us and furnish names.

Q. Is that your only method?

A. No.

Q. What are the other methods of getting names?

A. Well, just as I said: we see somebody and his name comes before us, and we put him in or somebody says he isn't qualified. Well, we have asked the sheriff here to advise us about certain ones.

Q. That includes you and Mr. Hill and Dr. Thomas, or persons you know personally?

A. Yes, or one of our personal friends whom we have the utmost confidence in. Then we don't put them in the jury box. We have no roll of the county, white or colored.

Q. Why did you compile a jury roll in October of this year?

A. Because the law of Alabama states it must be done. Jury roll in October of each year.

Q. Did you compile one in October, 1952?

A. No, I was not familiar with the law.

Q. Has it been the custom of the jury commission in Dallas County to compile a jury roll each year?

A. I don't know.

Q. We will ask you to come down here and examine these books, purporting to be the last jury roll of Dallas County. (Witness leaves the witness stand and examines books as they are indicated.) This book, marked Exhibit A, purports to be the jury roll for Dallas County for the year 1951 to 1953; and Exhibit B, sir, which is a bound [fol. 92] volume purporting to be the jury roll of Dallas County, Alabama, from 1942 to 1951; and Exhibit C, which purports to be the jury roll for Dallas County from 1931 to 1942; and ask you, sir, if there are any other jury rolls which are or have been in your possession or which you know about?

A. Only the one we just compiled.

Q. The one compiled in October?

A. Yes. I have nothing to do with these previous rolls. That was none of my business.

Q. Except Exhibit A.

A. That's right.

Q. And that one lasted for two years?

A. Approximately.

Q. So that the reason you compiled the new roll is because the law requires you to compile it every year?

A. Yes.



Q. I see. Why does the new roll include the names of 250 more or less negroes and the previous roll contained the names of many less?

A. Well, it was just thought that we should have more negroes' names in the box, so we set out to try to get negroes' names to put in the box that were suitable to go in there. And we used every available source we knew of.

Q. Did you use the registered voters list?

A. No.

Q. Do you think a man who is qualified to vote in Dallas County would be qualified to serve on the jury?

A. I don't know what the qualifications are. I think if he pays his poll tax and registers he can vote, but there are other qualifications for jurors.

Q. Did you examine the tax assessor's list?

A. No.

Q. Do you think if a man is a property holder in Dallas County it might indicate he has qualifications to serve?

A. Might.

Q. Do you think the tax assessor's list might be helpful? Why don't you use the tax assessor's list?

A. Frankly, I didn't think of it.

Q. Did you go to persons of your own acquaintance?

A. That's right.

Q. To determine what negroes you should include on the roll?

A. That's right.

Q. And I believe you said that you had asked two negroes?

A. Yes, Mark Thomas and Rev. Brown.

Q. And they have not submitted any names?

A. No.

Q. Did you ask these people for names previous to the time you compiled this roll or afterwards?

A. We work on it all the time. And at one of our meetings we said we would ask them, and I asked Mark and Mr. Hill called Rev. Brown. And I told Mark we had asked Rev. Brown and he could get with him, and I understand Mr. Hill told Rev. Brown that Mark had been notified. And we asked them to supply us with the names.

Q. Is there some special thing about these two men that suggested these men to the commission?

A. Yes!

[fol. 93] Q. Are they leaders in the community?

A. Yes. In my association with the negro race they have stood for the better things in the community, and I thought they would know the ones, or would know ones to contact, just as I did.

Q. When you say they have stood for the better things in the community, what do you mean?

A. In my opinion and in the opinion of others, both white and colored.

Q. Are both of these men voters?

A. I couldn't say.

Q. They are both property owners?

A. I am sure Mark is. I don't know whether Rev. Brown is or not.

Q. I see. We are going to ask you, Mr. Harper, at some subsequent time to examine the last jury roll compiled by your commission.

The Court: He can do it now. Mr. Hill is ready to come in.

Q. We are going to ask you to examine that particular volume, Exhibit X, compiled by you in October, 1953, and set down for us the names of those listed there whom you know to be negroes. We would like for you to write the names out and designate the precinct.

A. All right.

The Court: By name and precinct. Mr. Hill, if you will turn over to Mr. Harper your book, and take off the portion of the pad you used and give the balance to Mr. Harper.

(Mr. Hill turns book and pad over to Mr. Harper, and gives his list to Attorney Hall.)

(Mr. Harper leaves the court room with Exhibit X.)

WALLACE HILL, recalled to the witness stand, testified further as follows:

Direct examination.

By Attorney Hall:

Q. Have you examined the volume marked Defendant's Exhibit X?

A. I have.

Q. Which purports to be the present jury roll, compiled in October, 1953?

A. I have.

Q. Did you examine it page by page to ascertain which names listed there were negroes?

A. I did.

Q. And did you write those names down and number them with reference to precincts?

A. I did.

Q. Will you tell the Court exactly how many you found?

A. Yes, 177.

Q. Were you very careful in your examination?

A. Yes. In case of doubt, I didn't put them down.

[fol. 94] Q. You are fairly certain that is the total number of negroes on the jury roll?

A. No. This is the ones I picked out.

Q. Do you mean there may be more?

A. There may be more. How many, I don't know or I am in doubt about.

Q. How do you know these? Are you personally acquainted with them?

A. With some, yes. And I remember them from the names that were turned in on our work sheets, and some I ascertained from the address, and some from the occupation as shown in the book.

Q. Have you lived elsewhere in Dallas County other than Selma?

A. No.

Q. Do you have a large acquaintance among negroes in Selma?

A. Not too many.

Q. Do you have a large acquaintance with negroes outside of Selma?

A. No.

Q. Could you pick 177?

A. I imagine I could from both sexes.

Q. Let's say males.

A. I don't think so.

Q. Between the ages of twenty and sixty-five.

A. I don't think so.

Attorney Hall: We are going to excuse you for the time being.

Cross-examination.

By Solicitor Hare:

Q. I will ask you if you are familiar with Section 20 of Title 30 of the Code of Alabama as it relates to the jury commission? (Hands code to the witness.)

A. Yes, sir.

Q. In the Code, read that first part, or first sentence.

A. (Reading from the Code) "The jury commission shall meet in the court house at the county seat of the several counties on the first Monday in October in each year, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempted by law from serving on juries."

Q. And the law has heretofore designated the first Monday in October as the time you are supposed to go to work on that?

A. By the law book.

Q. Now that has been changed?

A. It has.

Q. And you are given what period of time to make the jury roll?

A. (Reading from "1953 Cumulative Pocket Part" of Code) "The jury commission shall meet in the court house at the county seat of the several counties annually, between the first day of August and the twentieth day of December."

Q. And the meeting of your jury commission and the

preparation of your jury roll for the year 1953 was in accordance with the provisions of law pertinent to the conduct of your jury commission?

A. It was.

Q. Do you recall when you completed that roll and certified it?

A. We completed the roll by the seventeenth of the month.

Q. By the seventeenth of October?

A. Yes, sir.

Q. Now, I will ask you if the jury box was filled about that time?

A. It was.

Q. And if the cards that were put in that jury box represented the names of all of the persons on the jury roll at that time?

A. It did.

Q. And I will ask you if the jury that was drawn for the week of November 9, 1953, was drawn from the fully prepared box and newly prepared roll?

A. Yes. So far as I know.

Q. And if the present venire, that one for the session of Court beginning December 7th, was drawn from that box and that newly prepared roll?

A. So far as I know.

Q. You say that you served on the jury commission for a few months prior to your reappointment in January, 1951. Do you recall that the jury commission made up a new and complete roll for every year?

A. I don't know.

Q. You made up a jury roll when—after you were appointed?

A. We were appointed in 1951, and we made a roll in October.

Q. In the year 1951?

A. That is true.

Q. Did you prepare a new roll in 1952?

A. Did not.

Q. Mr. Hill, did you and the jury commission prepare any supplemental list of persons during that time from 1951 until October 1953?



A. We made some lists.

Q. Did you cause cards to be printed?

A. We made cards from those lists.

Q. Were those listed put on the jury roll?

A. I don't believe they were.

Q. During the year 1951 and until October 1953, do you know whether the names of any negroes were in the jury box?

A. There were some names in the box.

Q. Approximately how many do you recall being in there?

A. I can't set a fixed number on that.

Q. Can you give me an estimate?

A. I'd say from twenty-five to fifty.

Q. And they were in the jury box and subject to being drawn during that time?

A. They were.

Q. Now, Mr. Hill, you were asked previously about some persons being disqualified by reason of being felons, or convicted of felony. I will ask you if this roll for 1953, if you have made any effort to determine whether persons [fol. 96] whose names are on there have been convicted of crime?

A. If we knew they were convicted of crime their names would not be in there.

Q. You have access to the Circuit Court records, do you not, in finding out about convictions? Or your clerk does?

A. I imagine we would have.

Q. And the City records, you have the privilege or you can or do call the police department to determine persons criminal records, if the question is raised?

A. We do.

Q. If a person was convicted in Federal Court, would you have any way of determining whether that person was convicted or not?

A. To my knowledge, we don't have any way. I don't know whether we could or not.

Q. Have you ever called Mobile to find out?

A. No.

Q. But do you know of any records in Dallas County

to go to for you to determine whether or not a person was convicted in the Federal Court?

A. No, sir.

Q. Now, Mr. Hill, until this roll was made in 1953, I will ask you if the jury roll at any time exactly reflected—if the jury roll of Dallas County, so far as you know, exactly reflected the names of those persons on the jury roll?

A. We thought so.

Q. But you did make up supplemental lists?

A. Yes.

Q. And you put those names on the jury roll at that time?

A. That is true.

Q. Mr. Hill, in determining the qualifications of persons for jury duty, you stated that you don't know of anybody who has been convicted of crime whose name is on the jury roll and in the jury box. You don't put them in there, do you?

A. We do not.

Q. Do you put permanently ill and disabled people in there?

A. We do not.

Q. Do you put teachers or any of those persons in the list of those persons exempt from jury duty?

A. Not knowingly, we do not.

Q. Do you knowingly put the names of persons in the jury box who can not read and write the English language?

A. I don't know of any in there that can not read and write.

Q. Have you put the names of persons in there who are suffering from some loathsome disease?

A. No, as far as I know, there are none in there.

Q. Have you put in the names of any persons suffering from venereal disease?

A. To my personal knowledge, I don't think so.

Q. Have you put the names of persons in there who are known or suspected to being of illegitimate birth?

A. No.

Q. Now, Mr. Hill, have you put the names of any [fol. 97] lawyers on this jury roll or in this jury box?

A. Not knowingly.

Q. Have you put the names of any doctors or pharmacists?

A. No.

Q. Have you put the names of any teachers in that box?

A. Not knowingly.

Q. Have you put the name of any dentist in that box?

A. No.

Q. Have you put the names of any preachers in that box?

A. Not knowingly.

Q. Are they exempt, under the statute?

A. Teachers are exempt.

Q. And ministers?

A. We don't put them in as a class.

Q. Are they excluded?

A. No, but we don't put them in there.

Q. What about policemen and deputies?

A. They are exempt.

Q. Firemen?

A. Firemen are not exempt, but I don't know whether we have any or not.

Q. And undertakers, do you recall any undertakers?

A. Licensed embalmers are exempt, and as far as I know we have none in there.

Q. So, as far as you have been able to determine, none of the persons exempt from jury duty under Section 3 of Title 30 have been included on the jury roll or put in the jury box?

A. That's right.

Q. Now, you said there are approximately 250 names of negroes in the box and on the roll?

A. I said at least that many.

Q. Now, Mr. Hill, have you and the other members of the jury commission made any diligent effort to get the names of negroes to go on there?

A. We have made efforts to do that, and are continuing to do that at the present time, to get qualified negro jurors.

Q. Have you put any negro teachers in there?

A. Not knowingly.

Q. Or any negro pharmacists or dentists or physicians?

A. Not knowingly.

Solicitor Hare: That is all, with the right to recall.

Redirect examination.

By Attorney Hall:

Q. I believe on cross-examination you said that your commission inquires into the legitimacy of a man's birth before you put him on the jury roll.

A. No, I didn't say that.

Q. What did you say about illegitimate birth? Was there some question raised about that? You don't put persons on the roll who are illegitimate?

A. It we know it.

Q. Why?

A. We just don't consider that as a part of a person's high moral character.

[fols 98-100]. Q. His birth has something to do with his character?

A. In some cases it might have.

Q. Birth may or not have anything to do with environment. We do want to get the commission's view on this particular subject. Just what does the commission mean when it says it will not put on the jury roll of Dallas County a person of illegitimate birth?

A. That is a question that has necessarily come up within our own commission meetings. He asked me had we done it, and I said not knowingly.

Q. About this reading and writing the English language. Did I understand you to answer the State's attorney on cross-examination that you did not have anybody on this roll who can't read and write the English language?

A. Not knowingly.

Q. Why wouldn't you put him on there?

A. I would if he was of high moral character and possessed the other qualifications. I don't know of any one in there.

Q. You are not personally acquainted with most of those people?

A. That's right.

Q. With reference to preachers, where did that rule come from?

A. That is not a rule, but it has been more as a practice from the jury commission for years gone back, and it is our own personal thought that the preachers should not sit in judgment on their own people.

Q. So you exclude them as a class?

A. We do.

Q. And undertakers, you qualified your answer there? You said only licensed embalmers?

A. As far as I know, you can be an undertaker and not be a licensed embalmer.

Q. Is it the practice of this commission to exclude undertakers?

A. Some classes of undertakers we might have in there. But the person who heads the business, I don't think we would put him in there, but generally they are the embalmers themselves.

Q. If a man owns a funeral home?

The Court: Let's use the local white funeral home. Mr. Joe Lawrence owns it. And let him carry on.

Q. Is Mr. Lawrence an embalmer?

A. He is, but he don't do the embalming.

Q. You don't list him?

A. He is not listed.

Q. Because he is an undertaker or because he is an embalmer?

A. He is the director of a funeral home and he could claim an exemption because he is an embalmer, licensed embalmer.

[fol. 101] MRS. PAULINE K. BARNES, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. You are Mrs. Pauline K. Barnes?

A. Yes.



Q. Are you the clerk of the Circuit Court?

A. Yes.

Q. Mrs. Barnes, what is your occupation?

A. I am clerk of the Circuit Court.

Q. Which circuit is that?

A. Circuit Court of Dallas County, Ala.

Q. As such clerk—I withdraw that. How long have you been clerk?

A. For a number of years.

Q. Could you tell us exactly how long?

A. Since 1928.

Q. As clerk of the Circuit Court, have you witnessed the organization of grand juries in this Court?

A. I have.

Q. You are familiar with their formation, with reference to color?

A. Yes.

[fol. 102] Q. Have you ever known a negro to serve on a grand jury in Dallas County, Alabama?

A. No.

Q. Have you ever seen a negro's name drawn for service on a grand jury of Dallas County?

A. I don't remember having seen that.

Q. Have you observed the petit juries in this Court over the years, and their formation?

A. Yes.

Q. And have you ever known a negro to serve on a petit jury?

A. No.

Attorney Hall: That is all. Thank you.

Cross-examination.

By Solicitor Hare:

Q. Have you ever known the name of any negro to appear on the venire in Dallas County, Alabama?

A. Yes.

Q. Over what period of time?

A. Over what period? It would be hard to say, but

we've had them on the venire from time to time for I couldn't say how long.

Q. Would you say five years? Or fifteen?

A. I'd say from five to ten, or perhaps fifteen.

Q. During that period of time, have you ever known or seen a negro who was on that venire come to the Circuit Judge and ask to be excused?

A. I have.

Q. Have you known them to be excused?

A. I have.

Q. Have you known them to answer to the call of the venire in open Court?

A. Yes.

Q. Have you seen negroes available for grand and petit jury service here in Dallas County, Alabama?

A. Yes.

Q. They were in Court and they answered?

A. Yes.

Q. How is a grand jury drawn in Dallas County?

A. Well, all of the names are put in the hat.

Q. The names of persons on the venire who were not excused and who answered their subpoenas?

A. That's right.

Q. Who puts those names in the hat?

A. I do.

Q. Mrs. Barnes, I will ask you, over the period of years you have been clerk of the Circuit Court of Dallas County, if you are the one who puts the names in the hat from which the Circuit Judge draws them?

A. Yes.

Q. During that period of time, have you ever withdrawn the names of any persons who were on the venire?

A. Not unless they were excused by the Court.

Q. Have you ever shunted aside and segregated the names or excluded the names of any persons who were on [fol. 103] the venire from those persons you put in the hat?

A. I have not.

Q. They have been there and they have been always available for jury duty?

A. Certainly.

# Redirect examination.

By Attorney Hall:

Q. In your best judgment, Mrs. Barnes, what is the ratio of white people to negroes in Dallas County?

A. I wouldn't know.

Q. Are you prepared to say whether or not there are more negroes than whites, or more white people than negroes?

A. I wouldn't know.

Q. You have no best judgment at all with reference to that question?

A. No, I wouldn't have.

Q. We would like to ask you one other question, if you please, Mrs. Barnes. Have you ever known a venire since 1928 which contained the names of more negroes than white people?

A. No.

Q. Have you ever seen one which contained as many negroes as white people?

A. No, I can't remember ever having seen one.

Q. Have you ever seen one which contained the names of a third as many negroes as white people?

A. No.

Q. Do you think, Mrs. Barnes, you may have seen names of a fourth as many negroes as white people?

A. Well, I don't know all of them.

Q. We were just asking for a specific instance in which, assuming you had a venire of eighty names, and of that number twenty of them were negroes. Have you ever known of such a venire?

A. No.

Q. Have you ever known of fifteen negroes on a single venire?

A. Well, no, I can't recall it at this time.

# Recross-examination.

By Solicitor Hare:

Q. You are generally in attendance in criminal sessions of Court in Dallas County, Alabama?

A. Yes.

Q. Approximately what proportion of defendants are negroes?

A. I'd say sixty percent, or more.

Q. Wouldn't you say ninety percent or more?

A. I am not very good at figuring in percentages.

Q. Would you say that a vast majority of the defendants in criminal cases in Dallas County are negroes?

[fol. 104] A. I would.

Solicitor Hare: That is all.

---

W. C. McCain, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. State your name, please, sir.

A. W. C. McCain.

Q. Are you a resident of Dallas County, Alabama?

A. Yes, sir.

Q. Is this your native home?

A. Yes, sir.

Q. You have been here all your life?

A. Not all my life. Most of it.

Q. What is your occupation?

A. Sheriff of Dallas County.

Q. How long have you been sheriff?

A. I've been sheriff since the twenty-fourth of August, 1946.

Q. As the sheriff of Dallas County, Mr. McCain, have you had occasion to attend grand jury sessions and give evidence?

A. Yes, I have attended lots of sessions.

Q. Have you been present when grand juries were organized in Dallas County?

A. Yes, sir.

Q. Have you ever been in the Circuit Court of Dallas County, Alabama, sir, when criminals or defendants were being tried before petit juries?

A. Yes, sir.

Q. You attend most every session of Court?

A. I am required by law to attend unless excused by the Court.

Q. How many negroes have you known to serve on the grand jury?

A. I haven't known any to actually serve on the grand jury.

Q. How many negroes have you known to serve on petit juries?

A. I haven't known any to serve on a petit jury.

Q. I understand, sir, that over the years there have been some negroes included in the venires in this county. What is the largest number you have ever seen on a venire?

A. I believe twelve—just guessing—is the most I have seen.

Q. Do you recall when that was?

A. That is the present venire. There is more than that, because we have some specials, but I am sure we have twelve or above. On the regular venier there are twelve on there, and I'm not positive about the specials.

Q. But you mean this particular venire?

A. The present venire, for the next term of Court, December seventh.

Q. If there is no objection, we would like for you to go through there (indicating venire) and point out those [fol. 105] twelve to us. We would like the record to show he is now examining the venire list for the term of Court beginning December seventh.

The Court: He is going to call the numbers as he calls them.

Q. All right, sir.

A. No. 9, Willie Smith; No. 18, Morgan Barnes; I am not sure about No. 26, I am not sure about that; I question 27, John Henry Roberts; I'd like to state No. 28, I am not sure what race, creed or nationality No. 28 is, James Siegler, Plantersville, that is a new one to me; No. 35, Young Childers, is a negro; No. 40, John Petty, I am not positive but I think he is a negro; No. 23—I mean 43—is Tom Wal-



ler; No. 45 is listed 126 Mechanic and that could be a negro, I am not sure about that; No. 47, Charlie Rascoe, is a negro; No. 51 I believe is a negro, Douglas Harris; No. 71, Washington Goodwin, is a negro; I am not sure about No. 34 William T. Whiten—W-h-i-t-e-n, I do not know William Whiten. I believe that is eleven, what I identify and what I question on this regular venire.

Q. Did you examine the special jurors too? Six you identify positively and six you question.

A. All three of these special jurors are white men. I know them personally.

Q. So that, sir, you are sure of these six, and six may or not be negroes?

A. I question them.

Q. Now, Sheriff McCain, previous to this particular venire drawn for the week of December seventh, previous to that venire what is the largest number of negroes you have ever seen at any time?

A. The jury that served for civil week, this past grand jury—that was the jury that was drawn for the last grand jury and civil week.

Q. What was the total number of negroes on that venire? Do you recall?

A. To the best of my recollection there were seven on there. I am not positive.

Q. Do you recall the total number on the particular venire?

A. It would run from sixty to seventy-five. That's the number drawn for a grand jury.

Q. And the total number on the venire for the week of December 7 is seventy-five regulars and then we have specials, three specials for each capital case, is that correct?

A. Yes, three specials in each capital case.

Q. Now, are you familiar with the population with reference to race in Dallas County?

A. Well, I am not familiar with that. I know that the majority of the people listed in Dallas County is in Selma. I know that by observation and experience.

Q. Do you have any knowledge with reference to whether or not there are more negroes than whites or more whites than negroes in Dallas County?

[fol. 106] A. I believe there are more negroes than whites in Dallas County.

Q. In your best judgment, how many more negroes than whites?

A. Well, they will run two to one, or possibly three to one. I have never had any occasion to tabulate it.

Q. In your best judgment there are at least two to one, is that right?

A. I'd say two to one. I believe they would run two to one.

Q. Would that be true of negro males and white males between the ages of twenty-one and sixty-five?

A. It would be hard for me to break that down. In some of our beats we have a good many more negroes than white. Out at some of the beats, when I go to Saturday night parties, sometimes I find a lot more women than men. I have never made any tabulation on it. And Saturday afternoon, you walk down Washington Street you would think there were ten or twelve to one; or, go over to Church Street on Saturday afternoon and you'd say, "My God, what kind of population have we got?" I have never made any tabulation on it.

Q. Would you have at least as many negro male citizens between the ages of twenty-one and sixty-five as you have white?

A. Just from observation and all, we would have more negro males than we have white males in Dallas County. That is just from observation. I think we would.

Q. Sheriff, have you ever seen a jury venire or list which contained as many negroes as it did white names?

A. I never have.

Q. Have you ever seen one in Dallas County which contained a third as many negroes' names as it did white names?

A. No, I haven't.

Q. Assuming that all twelve of these persons whom you identified on this present venire for the week of December seventh, assume that they are all negroes, even though you yourself said there is some doubt about six of them, would twelve be less than one-fourth of the total number of names?

A. No. There are seventy-five on there. I am fair in simple arithmetic. There are seventy-five names on there.

Q. And twelve would actually be less than one-fifth?

A. Sure would.

Q. As a matter of fact, it wouldn't be one-sixth.

A. No, it would not be a sixth of the seventy-five names appearing on there.

Q. And that is the largest number you have seen on any venire, is that true?

A. That is the largest I have seen on a venire.

Q. I see. Sheriff McCain, did you testify previously in a cause entitled State of Alabama versus William Earl Fikes, No. 8009? Did you testify in that cause to quash indictments then pending against him?

A. I testified in the previous hearing of these motions.

Q. Now, at that time, Sheriff, were you asked to identify certain names which appeared on the jury roll of Dallas County as being negro or white?

[fol. 107] A. I was.

Q. Will you look at these books here, marked A, B and C, and tell us which of them you examined?

A. (Witness leaves the stand and examines the three exhibits) I don't recall off-hand. I remember coming over and looking, but I don't recall whether I looked in one or all three of them. I actually don't recall.

Q. Do you recall how many names you could definitely say were those of negroes?

A. I do recall that there were in one of the books—I don't recall whether I looked in all three of them—but in one of the books I was able to identify two, I believe, that were added in pencil. And probably I questioned some of them just by the name. I recall this page (indicating in Exhibit A) and out of the last four names the last three as being negroes.

Q. You are now looking at a bound volume purporting to be the jury roll for Dallas County from 1951 to 1953, marked Exhibit A. You examined this same volume on the previous hearing on the motions which we mentioned a moment ago?

A. I believe I did.

Q. Do you recall whether you went through the entire book or not?

A. I think I did.

Q. Do you recall whether or not you found any names other than the three written there in pencil that you could definitely identify as negroes?

A. I don't recall being able to definitely identify but the three.

Q. So, in your best judgment, the only names on what purports to be a jury roll of Dallas County, Alabama, from 1951 to 1953, the only three names which you can identify definitely are those written in pencil on one of the pages under Precinct No. 36, which is the City of Selma?

A. Yes, sir.

Q. And would you read those three names, sir?

A. William Boyd, Benjamin H. Bender, and Ned Braxton.

[fol. 108]

Cross-examination.

By Solicitor Hare:

Q. You say that there are more negro males in the county than white males?

A. I believe it.

Q. In your opinion, are the negro males qualified in the same proportion for jury duty that the white males are?

A. I don't think so—in the same proportion.

Q. You say you have been sheriff since August, 1946?

A. Yes, sir.

Q. And you were a deputy before that time?

A. Yes, sir.

Q. Approximately what percentage of the defendants that come before the Circuit Court of Dallas County in criminal cases are negroes?

A. It would run ninety percent.

Q. Is that same ratio prevalent, so far as the races are concerned, in the inferior court of the County?

A. Yes, sir.

Q. You serve the Court of Common Pleas, do you not?

A. Yes, sir.

Q. Mr. McCain, over the period of years that you have been sheriff, have you had occasion to see the names of negroes on the venire of Dallas County?

A. Yes, sir, I have served them personally and my deputies have served them.

Q. Have you seen them answer to call on the venire?

A. I have.

Q. Have you seen them available for jury duty?

A. Yes, sir.

Q. Over what period of years would you say you have seen them?

A. Well, I have seen them over a period of ten or eleven years on the venire.

Q. And you say that you have served subpoenas on them for jury duty?

A. Yes, sir.

Q. And you know that your deputies have served them?

A. Yes, sir.

Q. And that is over a period of ten or eleven years?

A. Yes, sir.

Q. In your work as sheriff, do you frequently have occasion to see members of the negro population of Dallas County?

A. Yes.

Q. Are you familiar with their living habits, with reference to living in adultery or bigamy?

A. Yes, sir, I think I am.

Q. Is that unusual? For you to encounter negroes who are not married and living together, or married and living with different women?

A. I know lots of them who are living together without *without* benefit of matrimony.

Q. Is that the subject of criminal action in this county?

A. No, sir.

Q. I mean is that condition within the custom of the negroes of this county?

A. Yes, sir.

Solicitor Hare: That is all.



[fol. 109] Redirect examination.

By Attorney Hall:

Q. I believe you testified that practically ninety percent of the cases in the Circuit Court and in the Court of Common Pleas involve negroes. Do you mean that ninety percent of your colored population are criminals?

A. No, I mean that ninety percent of the cases that come to court are negroes.

Q. Some small portion of the colored population over and over again, or is it ninety percent of the population come in here?

A. We do have some that come in here again, but we have new ones. In a majority of my murder cases, that is the first time this individual has been in Court—the majority of the murder cases.

Q. What proportion of negroes of Dallas County would you say are criminals? You are the leading peace officer in the county.

A. I never have gave it any thought, what proportion are criminals. Lots of them commit murder and that is the first trouble they have been in. I don't term them criminals.

Q. Is that true of white people?

A. Yes. Well, I just have so many more negroes—negro killings—than I do white, so my observation has been mostly on the negro race.

Q. What we are trying to get at, Sheriff, is what you mean when you say ninety percent of the cases in this Court or in your smaller court, the Court of Common Please, involved colored people—if you mean that ninety percent of the population or the majority of your colored population are criminals?

A. No, I didn't mean the majority of the negro population are criminals. I said that ninety percent of the cases we have in Court involved negro defendants.

Q. I understand that, sir. Now, what is the occupation of ninety percent of the colored population? What do they do for a living?

A. Out in the county proper, they are farmers.

Q. Are they share croppers, hired hands or tenant farmers or land owners?

A. Of different classes. Some land owners.

Q. What is the proportion of land owners to tenant farmers?

A. I really don't know.

Q. Sheriff, when you say there are a lot of negro families living without benefit of matrimony, what do you mean?

A. I mean they are living as common law marriages, and lots of them just living together and don't set themselves up as common law marriage.

Q. They do observe the distinction, and observe it when they are just living together?

A. Yes. Yes.

Q. And they point out definitely, "We are not husband and wife. We are just living together"?

A. I run up on lots of them, just living together, and lots [fols. 110-115] of them that claim common law marriage.

Q. And they do know the difference between common law marriage and just living together?

A. I believe a large percent of them know the difference.

Q. Are you following your own conclusion, or did they definitely tell you they knew the difference? Are you saying that they told you, "We know we are not married. We're just living together"?

A. Well, I have lots of cases where they definitely know the difference between a man and a woman that are not married.

Q. When you say "not married", do you mean having gone through a ceremony?

A. Some claim a common law marriage and some call it a housekeeper. I never have—

Q. (Interrupting) Does Alabama recognize common law marriage?

A. Yes.

Q. Are there a lot of white people who are married under the common law marriage?

A. Not in Dallas County.

Q. Is it a legal form of marriage in the State of Alabama?

A. It is.

Q. Dallas County is in Alabama, sir?

A. Dallas County is.

Attorney Hall: Thank you, sir. That is all.

Recross-examination.

By Solicitor Hare:

Q. Do you have any idea how many white men have been tried in this Circuit Court for murder in the last ten years?

A. Haven't any been tried.

A. And almost every session of the Circuit Court there are several murder cases on the docket involving negro defendants?

A. I don't think we have had a session that there weren't any in the last eleven years.

• • • • •

[fol. 116] KENNETH M. HARPER, recalled to the stand, testified further as follows:

Direct examination.

By Attorney Hall:

Q. Mr. Harper, have you examined Exhibit X?

A. I have examined the jury roll that we fixed in October, if that is Exhibit X.

Q. Defendant's Exhibit X, which purports to be the jury roll for Dallas County, Alabama, and compiled in October, 1953. Did you examine that book?

A. Yes.

Q. Did you examine each page?

A. Yes.

Q. Did you compile a list of names that you identify as those of negroes?

A. Yes.

Q. Can you tell the Court how many?

A. No, I didn't take the trouble to count them.

Q. You just wrote them down?

A. Yes.

(Witness hands pad containing his list to Attorney Hall)

The Court: Just don't let my pad take up with you.

Attorney Hall: All right, sir.

(Laughter)

Q. Mr. Harper, according to our figures, you have found 198 names which you know positively to be those of negroes. I assume Mr. Hare may want to check these—I don't know. We would like to question you with reference to these names. Are you fairly certain these are names of negroes?

A. Yes.

Q. How, sir, can you be sure?

A. Some I knew personally, some I knew by their occupation, and some by their names, and some by their address.

Q. As I understand it, you don't live in Selma?

A. No.

Q. You have listed for Selma the names of seventy negroes. Do you know them personally?

A. Not all of them, no.

• • • • •

[fol. 117] Cross-examination.

By Solicitor Hare:

Q. You say you live in Union Beat?

A. Yes, sir.

Q. Is that a predominantly white beat?

A. I would think so.

Q. Just where does that beat lie?

A. Starts at Valley Creek and runs to the Cahaba River, and I'm not sure where it ends on the north. The Cahaba River is the line on the west and south. I am not sure where it ends on the north.

Q. In recent years it has become a major white development, so far as residents are concerned?

A. Yes.

Q. And are all of the white men in that beat over twenty-one and under sixty-five on the jury roll?

A. No, sir.

Q. Are all of the negro males over twenty-one and under sixty-five on the jury roll?

A. No.

Q. How many negroes did you say approximately are on the jury roll for 1953?

A. 250.

Q. And approximately how many whites?

A. 1,500.

Q. Now, Mr. Harper, do you know of any whites who are qualified for jury duty whose names are not on that roll?

A. Off-hand, I couldn't say I do.

[fol. 118-119] Q. Do you know of any negroes who are qualified for jury duty whose names are not on that roll?

A. Not that I know of.

Q. At any time since you have been a jury commissioner and in the preparation of the jury roll in October, 1953, did you or anyone on the jury commission systematically exclude from the jury roll and jury box the names of negroes in Dallas County?

A. No, sir.

Q. Did you or anyone on the jury commission make any diligent effort to determine and find those negroes in the county who are qualified for jury duty?

A. Certainly did.

Q. What effort did you make?

A. I contacted at least one or two white men in every beat in the county and asked them for lists.

Q. Did you all go over those lists?

A. Yes.

Q. What did you do?

A. I asked them to submit names to me to go in there, and they brought them in.

Q. I mean did the jury commission screen those lists as they came in?

A. Just as we screen any list. We don't put any name in without going over it ourselves.

Q. Do you put the names of professional people in there?

A. Not to our knowledge.

Q. Have you put any people, white or negro, on the jury



roll or in the box who are within the list of those exempt from jury duty under the statute?

A. Not to our knowledge.

Q. Mr. Harper, do you know approximately what the population ratio of negroes to whites is in Dallas County?

A. You mean in the entire county?

Q. Yes.

A. I would say, roughly, sixty-forty.

Q. Would that same percentage hold true for those qualified for jury duty?

A. It probably would be even greater. In other words, I would think instead of sixty percent negroes and forty percent whites, the ratio would show there are seventy percent whites eligible for jury duty against thirty percent negroes.

Q. Then sixty-forty percent wouldn't hold as to eligibility.

A. No.

Q. You stated that you don't know of any negroes in the county that are qualified whose names aren't on the roll and in the box?

A. I do not.

Q. Did you make a diligent effort to find qualified negroes to put on the jury roll?

A. Yes, I have and still am.

\* \* \* \* \*

[fol. 120] Recross-examination.

-By Solicitor Hare:

Q. These 250 names of negroes in there, are they in your opinion the most qualified in Dallas County to serve on the jury?

A. From what I can gather. I don't know them all, but we have been told they are.

Q. They have gone in there because they are regarded by the jury commission as the most qualified negroes in the county?

A. That's right.

\* \* \* \* \*

## Redirect examination.

By Attorney Hall:

Q. There is just one more little thing we would like to clear up. According to your own figures with reference to the ratio of population, there should be approximately 2,400 qualified negroes who would be eligible to serve on juries, or who should be listed on the jury roll. As I understand it, you have some 250, is that right?

A. That's right.

Q. Now, there should be at least 3,500 white persons, and [fol. 121] you have some 1,500?

A. Right.

Q. What, in your best judgment, is the reason that you don't have all of the persons qualified for jury service listed for jury service?

A. If you will tell me how it can be done. I make the large amount of \$5.00 when I serve. I have tried to put men in there that would give any man up here a fair trial, and I put the names in there that I know. And I can't take a job that would pay \$1,000.00 a month and do it for \$5.00 a day, and all I have tried to do is give the citizens of Dallas County men in the jury box that would give them a fair trial.

Q. So, then, Mr. Harper, when you felt there were sufficient number of names on the roll to do that, you felt that your job was done?

A. To my knowledge, yes. And if they came to me from time to time and gave me names, any time anybody suggested a name to me and they were qualified, their name went in the box.

Q. When you say, "they were qualified", sir, what do you mean?

A. Well, they have to have some character and be over twenty-one and under sixty-five, and cannot be lawyers and doctors and teachers. The rule is right there.

Q. When you say they were qualified, they had no obvious disqualifications?

A. Right.

Q. Are you under the impression that you can't list them on the jury roll if they have certain occupations?

A. I am using my discretion. It gives me discretion.

The Court: Cease arguing with ~~the~~ witness. Ask direct questions.

Q. However, Mr. Harper, getting back to the point, the point I was trying to make, it is primarily your desire as a member of the commission to see to it that there are enough names in the box to service this county?

A. That's right.

Q. You are not necessarily concerned in seeing to it that every qualified male in Dallas County is listed on the jury roll?

A. If I can get them without spending all my time doing it, yes.

Q. I see. Just one other question, please, sir. Is it the practice of the jury commission to go into other than obvious qualifications or prospective jurors? And when I say obvious, I'd like to explain I mean the ages between twenty-one and sixty-five, and the obvious fact that they may or not be crippled by a disease of some type, and the obvious general reputation a man may have in the community. Is it the practice of your commission to go beyond those things which might be obvious?

A. No, not that I know of.

Q. So, generally, if these things appear to be all right, then that man is listed on the jury roll of Dallas [fols. 122-289] County?

A. That's right.

#### Recross-examination.

By Solicitor Hare:

Q. You do take the recommendation of people who live in the various beats around the county about people?

A. Oh, yes, sir.

Q. That would cover—I mean, their recommendation could cover everything those people have been known to do?

A. It could.

Q. If you had the name of a man and knew he consistently gave bad checks, would you put his name in the jury box?

A. No, sir.

Q. Would you put his name in the jury box if you knew he was suffering from venereal disease?

A. It isn't the disease, it is what the disease relates to. Any man that way hasn't any business sitting up here trying cases. He is too loose living himself.

Q. If you were told he was an illegitimate child and had been brought up in an invironment that sort of thing is common to, would you put that man on the jury list and in the jury box?

A. Illegitimacy is not the part. But his parents, however, might just not think anything of the way they were living. How could he have any character? And therefore, he has no business being in the jury box.

Q. It would reflect on his morals?

A. Yes, sir. And when forty percent in Dallas County are illegitimate, it cuts it down mighty hard.

Q. You mean forty percent of the negro race?

A. Of the negro race, and less than one percent of the whites.

[fol. 290] C. D. SCOTT, 2ND., being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. What is your name?

A. C. D. Scott, the second.

Q. What is your occupation?

A. Dallas County Agricultural Agent.

Q. When you say that, just what does your job entail?

A. Service to farmers.

Q. To farmers located where?

A. In Dallas County.

Q. Do you serve all of the farmers in Dallas County?

A. We service approximately 500 farmers.

Q. Do you serve all farmers, both white and colored, in Dallas County, Alabama?

A. Just colored farmers.

[fol. 291] Q. So, as a matter of actual fact, you have been here only three years.

A. At this time, but I finished high school here.

Q. Is Dallas County your home?

A. I was born in Maringo County.

Q. Were you reared in Dallas County?

A. Since I was ten.

Q. And remained here until what age? When you went off to school?

A. I was sixteen.

Q. From the age of ten to sixteen where did you live?

A. 1514 Hayden Street in Selma, Alabama.

. . . . .

Q. Have you ever served on a jury in Dallas County, Alabama?

A. I have not.

Q. Have you ever been summoned for jury service in this county?

A. I have not.

Q. Do you know any negro who has served on a jury in this county?

A. I do not.

Q. Do you know any negro who has been summoned for jury service in this county?

A. Personally, I do not. I have read of some—of three, who were summoned.

Q. Is that right? Three were summoned. When was that?

A. I believe it was in connection with the last Fikes case.

[fol. 292] Q. The first Fikes case?

A. Yes.

Q. When you say the first Fikes case, do you have reference to a case in which the State of Alabama was the plaintiff versus William Earl Fikes, the defendant in this case?

A. Yes, sir.

Q. And at that time you read of three negroes being summoned for jury duty?

A. That's right.

Q. When was that? Do you recall?



A. If I remember correctly, it was in the spring of this year.

Q. Previous to that, had you ever heard of any negro being summoned for jury duty?

A. No.

Q. As a matter of fact, did you read that these negroes were summoned or that their names were on the venire?

A. On the venire.

Q. Did the newspaper say whether or not they had been summoned for jury service?

A. No.

Q. You don't know, as a matter of fact, whether they were summoned or not?

A. I do not.

Q. Do you know whether they served on the jury at that time?

A. I do not.

Q. As the Farm Agent for Dallas County, Alabama, do you have occasion to visit the rural beats of this county?

A. At one time or another, during the course of a year, I usually visit all of the beats.

Q. Do you visit all of the negro farmers located in these various beats?

A. I do not visit all of them.

Q. What is your practice with reference to visiting the farmers in Dallas County?

A. We visit those farmers we service and those farmers who make requests, where it is possible.

Q. In the course of your duty and your job, do you at some time contact all of the negro farmers in the area?

A. I do not contact all of them.

Q. How is it that farmers get extension service? Do they come to you?

A. Well, we have what we call community clubs. The community leaders establish the clubs, and we meet with them probably once a month. And we use the press and radio. But there are 3,693 colored farmers in Dallas County according to the census, and it is physically impossible for me to contact every farmer.

Q. Of that 3,693, how many would you say you have contacted?

A. Maybe a fourth of those.

Q. Did I understand you to say that there are 3,693 colored farmers in this county?

A. According to the census.

Q. So, in your best judgment, you have contacted at least 900 colored farmers in the last three years?

A. Yes, sir,

[fols. 293-310] Q. When you say 900 colored farmers, do you mean 900 colored males or are some of those persons probably females?

A. Males. The Home Agent works with the females.

Q. So, according to your best judgment, you contacted 900 male farmers in Dallas County?

A. That's right.

Q. Where are those 3,693 negro farmers more heavily concentrated with reference to precincts in Dallas County? Could you tell us that?

A. Tyler, Orrville, Browns, Union.

Q. How about River?

A. There are quite a number of them in River Beat.

Q. How about Boykin?

A. A number in Boykin.

Q. How about Martins?

A. To the best of my knowledge, Martins is a heavily populated negro district.

Q. Do you know the names of all of the farm owners in these various beats?

A. Just off-hand I don't believe I would know the names of all of the owners.

Q. What?

A. I wouldn't know the names to call them off.

Q. Do you have something with which you can refresh your recollection?

A. We usually keep a list on file.

Q. Do you have such a list?

A. Yes, we have a list.

Q. Where is it?

A. We keep it according to title.

Q. Do you keep a list according to race?

A. We have a list. We usually go through by title and we check out the colored, and we have a list of our own with nothing but negro owners.

Q. So you have a list for yourself with nothing but negro owners?

A. Yes.

Q. Do you have these by precinct?

A. No. We have a list by title with the number of acres and the precinct, but we don't have a precinct list.

Q. Where is that?

A. In our office. And I list by title, the person who owns the farm. The person who owns the farm may not be living there and there may be several tenants on that particular farm.

Q. But you have title owners listed, and do you have title owners as to color?

A. The list does not say so, but I have gone through the list and designated.

Q. The list that you have of the title owners?

A. List all farmers.

Q. Do you have any designation as to whether white or colored on that list?

A. I have made indication.

Q. Who made the list?

A. Production Marketing Administration.

Q. How long would it take you to get your list?

A. Not very long.

• • • • •

[fol. 311] WALLACE HILL, recalled to the stand, testified further as follows:

Direct examination.

By Attorney Hall:

Q. You are Mr. Wallace Hill, sir?

A. That is correct.

Q. The same Mr. Wallace Hill who is chairman of the jury commission of Dallas County, Alabama?

A. That is correct.

[fols. 312-313] Q. I ask you, sir, to step down here just one moment, please. (Witness leaves the stand.) This is

Defendant's Exhibit A. Will you identify it for us, please, sir?

A. Yes, sir. This is the jury roll of Dallas County compiled in 1951.

Q. And it was the jury roll of Dallas County from 1951 until what time?

A. Until the new roll was compiled in October, 1953.

Q. So Exhibit A was the jury roll of Dallas County, Alabama, from 1951 until sometime in October, 1953. Is that true?

A. That is true.

Q. Mr. Hill, will you step over here, please? I show you Defendant's Exhibit A, which purports to be the jury roll for Dallas County, Alabama, from 1951 until sometime in October, 1953; and I direct your attention to the page of said roll captioned, "Jury Roll, Dallas County, Alabama, Precinct No. 1, Plantersville, Alabama", and ask you to observe the list of names entered there and ask you to read those names off, please, sir, residence, place of business, occupation of each person listed, also the date of empanelment—month, day and year.

A. Precinct No. 1, Plantersville, Alabama. Murry Harrison Barnes, residence Plantersville, place of business Plantersville, occupation farmer, petit jury 10-27-52; Henry E. Biscoe, residence Plantersville, place of business Plantersville, occupation not given; Ernest D. Dyson, residence and place of business and occupation not listed; Paul M. Friday, occupation contractor, petit jury 4-17-52; William M. Friday, occupation trucker; Roland C. Hanlin; H. Clay Hayes; C. Grover Hendry; Walter C. Herrod, Sr.; Sterling P. Hutto; William H. Kendricks, no occupation; J. T. Little, no occupation; Thomas M. Martin, Jr., no occupation; J. Coy Morrow, no occupation; N. Prude Perry, no occupation, date empaneled 4-17-52 petit jury; James W. Pickering, no occupation; Vincent T. Pierson, no occupation; Watson Pierson, no occupation given; John L. Sherrer, no occupation given, petit jury 6-22-53; W. Otto Sherrer, no occupation given; Clyde Walker, occupation teacher, petit jury 10-27-52.

. . . . .

[fol. 314]. Q. Is it the practice of your commission to exclude from the jury roll of Dallas County the names of all persons employed in occupations listed under Section 3 of Title 30?

A. It is a practice, yes.

Q. I now show you Defendant's Exhibit X, purporting to be the jury roll for Dallas County, Alabama, and ask you to identify it.

A. This is the jury roll compiled in October, 1953.

Q. Is it endorsed, sir?

A. It is, by Wallace Hill, C. C. Thomas and K. M. Harper.

Q. We ask you to examine that roll, particularly direct your attention to Precinct No. 1, Plantersville.

A. Here it is, the first page.

Q. Will you read off the names on that first page, please, sir? Read their place of residence, place of business and their occupation.

A. (Reading) "Jury Roll, Dallas County, Alabama, Precinct No. 1, Plantersville. Capus Alexander, residence Plantersville, occupation farmer; John D. Atchison, residence Plantersville; occupation mechanic; Tom Alexander, residence Plantersville, occupation laborer; Dewery Atchison, residence Plantersville, occupation mechanic; Henry E. Bisco, residence Plantersville, place of business Criag Field, occupation civilian employee; Oliver Bearden, residence Plantersville, occupation farmer; Ocile Bearden, residence Plantersville, occupation farmer; Thomas Oran [fol. 315] Carroll, residence Plantersville, occupation barber; W. P. Davis, residence Plantersville, occupation laborer; David D. Daniels, residence Plantersville, occupation sawyer; William A. Friday, residence Plantersville, occupation truck driver; Alfred Ford, residence Plantersville, occupation merchant; Claude Fulford, residence Plantersville, occupation machine operator; Fred Griffin, residence Plantersville, occupation laborer; Herbert Goodwin, residence Plantersville, occupation laborer; William A. Gay, residence Plantersville, occupation woods foreman; C. Grover Hendry, residence Plantersville, place of business Sand and Gravel, occupation manager; Walter C. Herrod, Sr., residence Plantersville, occupation mail carrier; Clyde Harris,



residence Plantersville, occupation laborer; Joe Hathcock, residence Plantersville, occupation truck driver; Henry O. Houston, residence Plantersville, occupation, contractor; Olin Heifner, residence Plantersville, occupation truck driver; Guy Heifner, residence Plantersville, occupation truck driver; John Wiley Herrod, residence Plantersville, occupation school teacher; W. C. Herrod, Jr., residence Plantersville, occupation bus driver; James Henry Jackson, residence Plantersville, occupation truck driver; William H. Kendrick, residence Plantersville, occupation mail carrier; J. T. Little, residence Plantersville, occupation Merchant; Palmer Levins, residence Plantersville, occupation electrician; Barney I. Levins, residence Plantersville, occupation farmer; Boris E. Levins, residence Plantersville, place of business Sand & Gravel, occupation manager; Claude McKey, residence Plantersville, occupation salesman; Tom Martin, Jr., residence Plantersville, occupation farmer; John Milling, residence Plantersville, occupation laborer; Clayton Morrow, residence Plantersville, occupation laborer; Scott McGee, residence Plantersville, occupation laborer; Andy McGee, residence Plantersville, occupation laborer; Kelton Morrow, residence Plantersville, place of business retired, occupation farmer; Bennie McAfee—did you want this page, too?

Q. Thank you, sir. Mr. Hill, we observe that this jury roll was made just this October. Is that true?

A. It is.

Q. And at that time you were continuing your practice of not including on the jury role persons who were exempt according to the Code?

A. Yes.

Q. John Wiley Herrod, Plantersville, occupation school teacher. It is true his name is on the jury roll of Dallas County, Alabama, as of October, 1953?

A. It is.

Q. And so is the name of W. C. Herrod, Jr., bus driver. Is that true?

A. That is true.

Q. Are bus drivers exempt under the law of Alabama?

A. They are.

Q. And you will find the name of James Henry Jackson, truck driver?

[fol. 316] A. Right.

Q. And also you find the name Joe Hathcock, truck driver, here?

A. That's right.

Q. William A. Friday, truck driver?

A. Right.

Q. Might they not be exempt under the statute?

A. They might be. Not necessarily so, though.

Q. However, school teachers are exempt under the statute?

A. While practicing their profession, or while school is actually in session.

Q. Then it is the practice of the jury commission of Dallas County to enter the names of qualified teachers on the jury roll?

A. It is not. That was an over-sight.

Q. There was another name entered sometime between 1951 and 1953 who was also a teacher and lived at Plantersville?

A. Yes, Clyde Walker.

Q. Sir, I show you this bound volume, Defendant's Exhibit X, purporting to be the jury roll for Dallas County, Alabama, as of October, 1953, and direct your attention, sir, to Jury Roll, Dallas County, Alabama, Precinct No. 36, Selma, and we find the name of Sidney Rodgers listed there. I ask you if you know the gentleman? Do you know Sidney Rodgers?

A. No, I do not.

Q. What is his residence?

A. 223 Water Avenue.

Q. Place of business?

A. Southern Railway.

Q. And his occupation?

A. It isn't shown.

Q. Now, Mr. Hill, will you please take the stand again? Sit back down. (Witness returns to the stand.) I believe you had the directory of the City of Selma to help in the preparation of the jury roll?

A. In certain cases, yes.

Q. That was one of the means by which you arrived at names on the roll?

A. That's right.

Q. This is the directory of the city of Selma (showing book to witness)?

A. This is the 1953 directory, yes.

Q. Will you turn and see if it contains the name of Sidney Rodgers, who lives at 223 Water Avenue?

A. Yes, here it is.

Q. How is that name listed in the book? R-o-d-g-e-r-s, S-i-d-n-e-y.

A. Conductor, Southern Railway.

Q. Are conductors exempt under the statute?

A. I'll have to refer to the statute. Yes, sir.

Q. I direct your attention to the 1940 Code of Alabama, Section 3, Title 30, as amended. (handing said code to witness.)

A. The Code says that conductors are exempt from jury duty.

Q. So that in this instance you did not follow your general rule?

A. We were following our general rule. We may have [fol. 317] made errors in doing so.

Q. In this particular instance you did not follow it?

A. He would be exempt from jury duty.

Q. Now, sir, we would like to show you Defendant's Exhibit X, purporting to be the jury roll for Dallas County, Alabama, as of October, 1953, and we direct your attention to that portion of the roll captioned, "Jury Roll, Dallas County, Alabama, Precinct 36, Selma", which contains the name of R. Winston Russell, residence Cedar Drive, place of business Southern Railway, no occupation listed, and ask you if you know the gentleman?

A. I know him.

Q. What is his occupation?

A. At present he is a railroad fireman.

Q. How long has he been a fireman?

A. Some years.

Q. Are firemen exempt under the law?

A. They are.

Q. In this particular instance, you didn't follow your general rule in building your jury roll?

A. No, not in this instance.

Q. This roll was compiled in October, after the hearing of the motions filed in the case of the State of Alabama versus William Earl Fikes, No. 8009, in this Court to quash those indictments because of irregularities and unconstitutionality in the organization of the jury of Dallas County which found the indictments against this man, and of the venire. Isn't that true, sir?

A. That is true.

Q. Mr. Hill, will you please examine this exhibit which I show you? Exhibit A, purporting to be the jury roll of Dallas County, Alabama, for the years 1951 up to October, 1953, and I direct your attention to that portion captioned, "Jury Roll, Dallas County, Alabama, Precinct No. 36, Selma", and direct your attention to the name, "Russell, R. Winston", residence Cedar Drive, place of business Southern Railway.

A. Yes.

Q. Was Mr. Russell a railroad fireman at that time?

A. I think he was on the extra board as an engineer at that time.

Q. Are railroad engineers exempt under the statute?

A. They are.

Q. So that both times, according to the rule which your commission has said in this Court that it follows, Mr. Winston R. Russell's name should not have been included on the roll?

A. That is true.

Q. Is Mr. Russell white or colored?

A. He is white.

Q. We ask you if it is the policy of your board to exclude firemen from the jury roll?

A. As a general rule, it is.

Q. As a general rule?

A. We have included some on there by their own request.

Q. Mr. Hill, would you include a doctor or dentist or school teacher by his own request?

A. If they made a point of coming to us and would waive



[fol. 318] their exemption and wanted to get on there, then we would consider their being on the jury roll.

Q. Have you ever made it a practice to seek out these persons and ask them if they were willing to waive their exemption if placed on the jury roll?

A. No.

Q. It is your practice to wait until approached?

A. Yes, sir.

Q. Is that true with both white and colored?

A. Yes.

. . . . .

Q. We will ask you to step over here, please, sir, and show you this book (witness leaves the stand) marked Defendant's Exhibit X, which purports to be the jury roll for Dallas County, Alabama, as of October, 1953, and ask you to turn this book over to Precinct 36, which is Selma, the page which bears at the top the caption, "Jury Roll, Dallas County, Alabama, Precinct 36, Selma". We direct your attention to the name Cecil C. Little, Sr., and ask you to read that.

A. Cecil C. Little, Sr., residence 200 McDonald, place of business Southern Railway.

Q. Are you acquainted with that gentleman?

A. I am.

Q. What is his occupation?

A. He is a conductor on the railroad.

Q. Is that a train conductor?

A. That is correct.

Q. He is one of the people exempt from jury duty?

A. Yes.

Q. Is his name listed on the present jury roll?

A. It is.

Q. We would like for you to examine this book, Exhibit A, purporting to be the jury roll for Dallas County, Alabama, for 1951 until sometime in October, 1953, and ask you to turn the pages of this book to Precinct 36, sir. Would [fol. 319] you examine those pages and see if you can find the name of Cecil C. Little?

A. Yes, here are two of them.

Q. It doesn't say whether junior or senior?



A. It does not.

Q. What does it say?

A. 312 Franklin Street, Southern Railway.

Q. Are you acquainted with this Cecil C. Little who lives at that address?

A. I am.

Q. What does he do?

A. Conductor on the Southern Railway.

Q. Is that the same man as in Exhibit X?

A. Yes, sir.

Q. And he is one of the class of persons exempt under the law of the State of Alabama from jury duty?

A. That is correct.

Q. Will you see if you can find listed there the name of J. W. Little, Jr., or John W. Little, Jr.?

A. John W. Little, Jr., 312 Franklin Street, Western Railway.

Q. Are you acquainted with him?

A. He is a son of Cecil.

Q. Do you know what he does for the Western Railway?

A. I do not.

Q. You used the directory of the City of Selma in helping to get us the list?

A. Yes.

Q. What is this book (holding book up)?

A. City Directory of Selma.

Q. Will you see if you can find the name of J. W. Little, please, sir?

A. If I may amend my statement? This man is a brother of Cecil Little.

Q. Yes, sir.

A. J. Wesley Little, Jr., conductor of the Western Railway.

Q. Train conductor?

A. Yes.

Q. And he is one of the class of persons who are exempt from jury duty under the statute?

A. Yes.

Q. Did you know these persons at the time you drew up the list?

A. Yes.

Q. And were you acquainted with the occupations?

A. Yes.

Q. Do you know Robert H. Little?

A. I'd say that I do.

Q. Can you find the name Robert H. Little?

A. It appears in Exhibit A, 312 Franklin Street, occupation Southern Railway Company.

Q. You don't know what he does for the railroad?

A. No, I can't say.

Q. Will you examine the City Directory, sir, and see if you can find it listed there?

A. I don't see his name in this directory.

Q. I see. Sir, do you know William R. Long?

A. I know a W. Ruford Long, which I presume is the same person.

Q. Would he live at 2535 Water Avenue?

A. Yes.

Q. Does he work for the Southern Railway Company?

A. Yes, yard master.

Q. Would the yard master be exempt?

A. He would not.

[fol. 320] Q. Are you certain?

A. I am not certain, no, but I don't think he would be.

Q. Do you have a William R. Long or a William Ruford Long listed in Exhibit X, which purports to be the jury roll of Dallas County—I mean Exhibit A?

A. Yes, 2535 Water Avenue, place of business Southern Railway Company.

Q. Under the column headed, "Occupation", is his occupation listed?

A. There is none.

Q. So that from checking the name and listing on the jury roll, you would have no way of knowing what this William R. Long does for the Southern?

A. That is correct. Unless from personal knowledge.

Q. Assuming that someone else were to examine this book, without personal knowledge they would have no way of knowing what this man does?

County Solicitor Reese: We object to that. Under the law, no one except the jury commission and clerk has access to this jury roll.

Attorney Hall: That is true, but jury commissions change. It is very possible that this commission would not be with us and another commission would examine this book.

The Court: Over-rule.

The Witness: That is true.

Q. Mr. Hill, you are examining a page in Defendant's Exhibit A, which purports to be the jury roll for Dallas County, Alabama, for 1951 to '53?

A. That is true.

Q. Do you find listed on that roll the name of Hugh C. Mauldin, in Precinct No. 36?

A. Yes. Hugh C. Mauldin, 506 Alabama Avenue, Southern Railway.

Q. Are you acquainted with Mr. Mauldin?

A. I know him when I see him.

Q. Is he a white man?

A. He is.

Q. Do you know what he does for the Southern Railway?

A. I do not.

Q. Will you read under the column entitled "Occupation" what it says for Mr. Hugh C. Mauldin?

A. There is no entry under the title, "Occupation".

Q. So, we have no way of knowing whether he is a conductor or switchman or what he does?

A. Only by personal knowledge.

Q. Do you personally know, sir?

A. I do not.

Q. Sir, would you see if you have listed there the name of Taylor T. Miller?

A. Yes, Taylor T. Miller, 512 Lapsley Street, L & N Railroad Co.

Q. Are you acquainted with him?

A. I am.

Q. What is his occupation?

A. At the present time he is freight agent of the L & N Railroad.

[fol. 321] Q. Is he white or colored?

A. He is white.

Q. Are freight agents exempt from jury duty under the law?

A. They are not, to my knowledge.

Q. Sir, will you examine this book, which is the Code of Alabama, 1940, Titles 30 to 45. Examine this section of the book which is three of Title 30 of the 1940 Code of Alabama, entitled, "Persons exempt from jury duty", and read it off for us, please, sir.

The Court: He has read that once or twice. You just want him to ascertain he is a solicitor for freight?

Attorney Hall: At the time this book was made up he was a dispatcher, at the time this book was compiled.

The Court: He has been promoted.

Q. When was he the freight agent?

A. The Judge stated he was not the freight agent, he was the freight solicitor.

Q. Has he ever been freight agent?

A. That was my impression.

Q. Will you ascertain whether station agents are exempt?

A. He is not a station agent, but (reading from Section 3, Title 30 of the Code) "railroad station agents and telegraph operators when actually in sole charge of an office".

Q. Will you examine this book and tell us what it is?

A. Selma City Directory, 1952.

Q. Will you see if you can find the name of Taylor T. Miller (handing said city directory to witness)?

A. Yes, sir, Taylor T. Miller, 512 Lapsley Street, freight agent, L & N and Western Railroad.

Q. Will you see if you can find the name of Donald Mills on that jury roll, sir, under Precinct No. 36?

A. Jury Roll, Dallas County, Alabama, Precinct No. 36, Donald Mills, residence 520 Tremont Street, place of business not given, occupation engineer. He is a consulting engineer.

Q. You know that?

A. I do.

The Court: The Court will substantiate that testimony.

Q. Mr. Hill, will you see if you can find listed there the name of Mitchell Barlow, or Barlow Mitchell rather?

A. What precinct is that?

Q. Thirty-six.



A. Barlow Mitchell—I don't see it in this Exhibit A.

Q. Sir, I show you this book marked Defendant's Exhibit X, purporting to be the present jury roll for Dallas County, Alabama, and ask you to turn to the pages marked Precinct 36, Selma. Will you see if there is the name of Claude C. Day listed on that roll?

A. There is.

Special Prosecutor Gayle: I'd like to ascertain at this time what is the purpose of this.

[fol. 322] Attorney Hall: If the Court requires it, I will be glad to say.

The Court: I don't care for it.

Q. Will you tell us what is his address?

A. Claude C. Day, 217 Pettus Street, L & N Railroad.

Q. Are you personally acquainted with him?

A. I would probably know him if I saw him.

Q. But you don't know whether you know him or not? Will you examine this book and tell us what it is?

A. City Directory of the City of Selma, 1952.

Q. Will you see whether Claude C. Day is listed in that directory?

A. Claude C. Day, commercial agent, L & N Railroad Company, 217 Pettus St.

Q. And is he white or colored?

A. He is a white man.

Q. Mr. Hill, please sit down, sir. (Witness returns to stand.) In your best judgment, as chairman of the jury commission, has the present jury commission left off of the jury roll of Dallas County, Alabama, the names of all persons who might be exempt under the law of Alabama?

A. We did not leave off all of the names who might be exempt.

Q. What proportion?

A. I don't know, but most of them.

Q. How did you arrive at the exact number that you would include?

A. We made no exact number. We had no number in mind at all.

Q. How did you decide to leave some on and not list others?



A. Some had been serving on prior juries and had made no complaint about serving and we could assume they would claim no exemption.

Q. Have you ever known a negro train conductor?

A. No, I don't believe I have.

Q. Have you ever known of a negro to be a railroad engineer?

A. From hearsay only.

Q. Does the law make distinction between railroad engineers and physicians and teachers, as to their exempt status?

A. No.

Q. Railroad engineers are exempt just as school teachers and physicians and dentists and druggists?

A. That is true.

Q. Do you know some negro school teachers?

A. Yes.

Q. Do you know if any are on the present jury roll of Dallas County, Alabama?

A. I don't think so.

Q. Why?

A. As a class we exempt them.

Q. Are train conductors exempt, too?

A. They are.

Q. Do you know any railroad train conductors whose names are on the present jury roll?

A. Yes, I have enumerated them.

Q. You personally know some are on the present jury roll?

[fols. 323-326] County Solicitor Reese: That has been brought out two or three times.

Q. Do you know any negro physicians, sir?

A. Yes, I do.

Q. Do you know whether or not any negro physicians are on the present jury roll of Dallas County, Alabama?

A. They are not.

Q. Do you know if any have ever been on the jury roll of Dallas County, Alabama?

A. I can't answer that. I don't know of any on the jury roll.

Q. Do you know any negro dentists living in Dallas County, Alabama?

A. I don't know them personally. I know one by name only.

Q. Is that one you know on the present jury roll of Dallas County, Alabama?

A. I don't think so.

[fol. 327] WALLACE HILL, recalled to the stand, testified further as follows:

Direct examination.

By Attorney Hall:

Q. Were you asked to examine Defendant's Exhibit X, which purports to be the present jury roll of Dallas County, Alabama?

A. I was.

Q. And to ascertain whether or not there were persons listed thereon who might possibly claim exemption?

A. Yes, sir.

Q. Did you find any such?

A. I did.

Q. How many did you find?

A. Fifteen.

Q. Those were all that you found on the present jury roll?

A. All that I knew.

Q. That you knew personally? Let me see that, please. (Witness hands list to Attorney Hall) Mr. Hill, in examining this jury roll, did you examine the occupation listed for each name?

A. I did.

Q. I see. You have here for Precinct No. 1 the name John Wiley Herrod. Do you know him personally?

A. I do not.

Q. But you listed him because of the fact his occupation was listed as school teacher?

A. That is true.

Q. Some of the persons here you may not know personally?

A. That's true.

Q. And you listed them because of the fact there occupation was set out on the jury roll, and you knew by virtue of those occupations they could claim exemption under our law?

A. I know personally the majority of these people on this list (indicating list he had just handed to Attorney Hall).

Q. We will ask you if the occupations of all of the persons listed on the present jury roll of Dallas County are listed too?

A. The occupations of all of them are not listed.

Q. So that if you didn't know them personally you wouldn't know whether or not they could claim exemption under the law.

A. That is true.

Q. I will ask you, Mr. Hill, if you know the majority of the people on the present jury roll of Dallas County, Alabama?

A. Personally, I do not.

Q. So that it is possible there is a much larger number of people here who might claim exemption under the law of Alabama?

A. There could be more.

Q. However, you did ascertain that John Wiley Herrod —will you read them?

A. Precinct No. 1: John Wiley Herrod, school teacher. Precinct No. 8: Lee Holliday, mail carrier. Precinct No. 10: Gilbert M. Buster, mail carrier. Precinct No. 11: Grover Hannah, driver for a freight line. Precinct No. 23: John B. Kerridge, Southern Railway employee; Peter Mock, mail carrier. Precinct No. 36: Cecil L. Body, Southern Railway Company, he is an engineer; Charles C. Burke, Western Railroad, is a conductor; Claude C. Day, L & N Railroad, I think he was a conductor; Cecil C. Little, Sr., railroad conductor; John W. Little, Jr., railroad conductor; and Sidney W. Mott, I think he is a railroad engineer, with [fol. 328] a question mark; Jesse H. Norris, if he is who

I think he is, he is an engineer for the railroad; Sidney Rodgers, who was shown to me to be a railroad engineer; R. Winston Russell, Southern Railway.

Q. Those are the only names you found?

A. The only ones to my knowledge.

Q. Mr. Hill, we ask you to step down here, please, sir (witness leaves the stand), and examine this book, which is Defendant's Exhibit X and which purports to be the present jury roll of Dallas County. We direct your attention to a page entitled, "July Roll, Dallas County, Alabama, Precinct No. 36, Selma", and to the name thereon of Thomas E. Yarbrough (indicating name to witness). Will you read that?

A. Thomas E. Yarbrough, 3220 Water Avenue, place of business Southern Railway.

Q. Are you personally acquainted with him?

A. I am not.

Q. I believe you testified that you used the City directory to help you in preparing that roll?

A. To some extent.

Q. What is this book (showing book to witness)?

A. City Directory of Selma, 1952.

Q. Will you see if you can find the name of Thomas E. Yarbrough therein?

A. (Reading from City Directory) "Thomas E. Yarbrough, conductor Southern Railway, residence 3220 Water Avenue".

Q. So that under the Alabama State law he could claim exemption?

A. He could claim exemption.

Q. Will you examine this page in Exhibit X, which purports to be the present jury roll of Dallas County, further and see if you see the name of Elvin G. Yow, Y-o-w?

A. Yes, it is in it.

Q. It is on the present jury roll of Dallas County?

A. It is.

Q. Is there an address listed?

A. 112 Lawrence Street.

Q. And that is in Precinct No. 36?

A. Yes.

Q. What is his occupation?



A. Place of business, Southern Railway; occupation not listed.

Q. Are you acquainted with him?

A. I have been introduced to him one time several years ago, and I was just told he was connected with the Southern Railway.

Q. Will you examine the City Directory of Selma and see if his name is listed there, please, sir?

A. It is listed in the City Director, Elvin G. Yow, fireman, Southern Railway Company.

Q. Now, you may sit back down, sir. (Witness returns to stand) Mr. Hill, with reference to the character or reputation or the criminal record of persons listed for jury duty in Dallas County, Alabama, did your commission [fol. 329] ascertain whether or not every person listed on the present jury roll of Dallas County, Alabama, had a criminal record?

A. I would like to make this statement, that at one time and prior to the time this roll was made we had occasion to ask the sheriff of Dallas County to sit in session with us. Those names were still in the jury box—not on the roll, but in the box—and we reviewed them. We read those names aloud and asked him if he knew of any criminal record of those people. We did remove some at that time.

Q. That is the only time in which you have gone into the criminal record of any persons who might be listed for jury duty?

A. Yes, except for the personal knowledge of the commissioners.

Q. So that it is possible there may be persons on that roll with criminal records?

A. It is entirely possible, yes.

Q. I see, sir. Now, Mr. Hill, I believe you said that on some occasions you have listed persons who could claim exemption under the State law because those persons had come to you and told you that they would like to be on the jury roll and that they would waive their exemption?

A. Yes, we have had that happen.

Q. Has that happened in the majority of cases where persons are listed who could claim exemption?



A. No, I wouldn't say in the majority.

Q. Just a few, sir?

A. That's right.

[fols. 330-333] Q. Have you ever been approached by any school teacher with reference to being on the jury roll of Dallas County, Alabama?

A. I have not.

Q. Have you ever been approached by any physician with reference to being on the jury roll?

A. I have not.

Q. Or by any minister of the Gospel?

A. I have not.

Q. Or by any optometrist with reference to being on the jury roll of Dallas County, Alabama?

A. No.

Q. Have you ever been approached by any undertaker with reference to being on the jury roll of Dallas County, Alabama?

A. No.

Q. Do you know any undertaker who is on the jury roll of Dallas County, Alabama?

A. No.

Q. Do you know any druggist or pharmacist who is on the present jury roll of Dallas County?

A. We have listed the owners of some drug stores.

[fol. 334]

Cross-examination.

By Solicitor Hare:

Q. Your testimony is that you are a member of the present jury commission and have been since 1951, and, further, that you were a member of the prior jury commission for a period of about six months?

A. Roughly, yes.

Q. Have you, as a member of the jury commission, at any time systematically or arbitrarily excluded negroes from the jury box or jury roll of Dallas County?

A. We have not.

Q. Have you arbitrarily excluded or discriminated against members of the negro race in the properation of the jury roll of Dallas County, Alabama?

A. I have not.

Q. You testified as to Exhibit A, the jury roll of Dallas County for 1951 to '53. I will ask you if that jury roll completely and exactly reflects the personnel of the jury roll as contained in the jury box of Dallas County?

Attorney Hall: I would like to hear that question again.

Solicitor Hare: I am asking if the jury roll for 1951 through 1953, if the jury roll of Dallas County exactly reflects the contents of the jury box of Dallas County.

Attorney Hall: We object to that question.

The Court: Over-rule the objection.

[fol. 335] Attorney Hall: We except to the ruling of the Court.

The Witness: It has been brought out in evidence that there were names in the jury box that were not on the jury roll.

Q. In your best judgment there were thirty to fifty negroes names in the jury box during those years?

A. Well, close to that figure.

Q. Now, Mr. Hill, do you have any idea of approximately how many railway employees there are in the City of Selma?

A. There are three railroad systems located here in the City and Dallas County, and my guess is that there would be at least 500 or maybe more employees of those railroads.

Attorney Hall: We object to that guess.

The Court: That is your best judgment?

The Witness: Yes, sir.

The Court: Over-rule.

Q. Are most of those employees males or females?

A. The majority are males.

Q. And in your study of Exhibit X, the jury roll for 1953, you found approximately fifteen persons that you thought could claim exemption?

A. To my personal knowledge.

Q. And the majority of those are railroad men?

A. Yes.

Q. And do you know, with the closing of the shop in Selma, that there is a surplus of railway employees in Dallas County and in Selma?

A. As a matter of fact, I know that.

Q. You know that?

A. I do know that.

Q. And there are more men who have worked for the railroad and who are still subject to re-employment than there are jobs?

A. Yes.

Q. Now, this druggist you identified, owner of a drug store, Warner Reid. You said you know him?

A. I do.

Q. Is he white or colored?

A. Negro.

Q. Mr. Hill, I will ask you to further consult this section of the Code (handing book to witness), and see if you can find anywhere in here where as a matter of law a rural mail carrier is exempt. I direct your attention to Section 3 of Title 30 of the Code of Alabama as amended.

A. What shall I read?

Q. Look through it and see if you find where rural mail carriers are exempt.

A. (Reading) "The Code of Alabama, 1953 Cumulative Pocket Part". "Persons exempt from jury duty.—The following persons are exempt from jury duty, unless by their own consent". In this particular section, I do not see the rural mail carriers as being listed.

Q. Is it a matter of jury commission policy here that you try not to put mail carriers on the jury roll?

A. We have put them in there.

[fols. 336-339] Q. Generally, you don't put them in there, do you?

A. We have several in there.

Q. They are not exempt under the law?

A. I won't answer that, sir.

Q. They are not exempt under the law as you read it?

A. Not as I read it.

**Q.** With reference to doctors and physicians and dentists and pharmacists, is there anything in the law of Alabama as it pertains to a jury commission that prohibits you from putting them in there?

**A.** I think there is a rule that exemption is not a disqualification.

**Q.** As you understand the law, you and the jury commission could put the names of every doctor, dentist, physician, pharmacist, railway engineer and conductor on the jury roll if you saw fit to do so?

**A.** We could do so.

**Q.** Mr. Hill, do you know how many negro drug stores there are in Selma?

**A.** That is the only one I know, the one owned by Warner Reid.

**Q.** That is the store owned by Warner Reid that you previously testified about?

**A.** Yes.

**Q.** And in your previous testimony you testified that the present jury roll of Dallas County, the one compiled in October, 1953, contains the names of 250 to 300 negroes?

**A.** I said at a minimum 250.

**Q.** And they are negro male citizens of Dallas County, Alabama?

**A.** That is true.

Solicitor Hare: That is all.

Redirect examination.

By Attorney Hall:

**Q.** Mr. Hill, were you asked to examine Exhibit X, which purports to be the present jury roll of Dallas County, Alabama, and ascertain how many persons were listed thereon that you knew were negroes?

**A.** Yes, I was.

**Q.** How many did you find?

**A.** I think you have the record, which shows 177, if I am not mistaken.

**Q.** You know there are 177?

**A.** I picked that many out of the roll.

Q. Now, Mr. Hill, did you know all of those colored people?

A. No, I did not.

Q. How did you know they were colored people?

A. As I stated previously, I know by occupation, some by personal knowledge, some by addresses.

Q. Of that 177, how many would you say you knew personally?

A. Very few.

Q. In your best judgment, what number?

A. I wouldn't go too high. At least twenty-five of them.

[fols. 340-344]

Direct examination.

By Attorney Hall:

[fol. 345] C. C. THOMAS, recalled to the stand, testified further as follows:

Cross-examination.

By Solicitor Hare:

Q. You have testified that you are a member of the jury commission of Dallas County and have been since 1951?

A. That's right.

Q. Since you have been a member of the jury commission of Dallas County, I will ask you if you have arbitrarily or systematically excluded negroes from the preparation of the jury roll of Dallas County?

A. I have not. We have tried to give this Court the best jury we could with the knowledge we have.

Q. Have you systematically included negroes on the jury role?

A. To some extent, yes.

Q. Well, you have included them, haven't you?

A. Yes, that's right.

Q. I will ask you if there has been a system or practice on the part of the jury commission, of which you are a



member, arbitrarily to discriminate against members of the negro race?

A. No.

. . . . .

---

[fol. 346] H. C. REED, recalled to the stand, testified further as follows:

Cross-examination.

By Solicitor Hare:

Q. You are H. C. Reed?

A. Yes, sir.

Q. And you have testified previously in this proceeding?

A. Yes, sir, I have.

Q. I asked you to examine Exhibit X, the present jury roll of Dallas County, Alabama, prepared October, 1953, [fol. 347] and list the names of persons you knew to be negroes. Have you done that?

A. Yes, sir.

Q. How many did you find?

A. I have listed them, I haven't counted them. (Witness counts names on his list) I count fifty.

Q. Now, those are people you know to be negroes?

A. I do.

Q. Did you know every person whose name you saw in Precinct 36 when you examined the book?

A. No, sir, I did not.

Q. And so you can't state, as a matter of fact, that those (indicating witness' list) constitute the names of all of the negroes on that list.

A. They are the ones that I know.

. . . . .

[fol. 348] KENNETH M. HARPER, recalled to the stand, testified further as follows:

Direct examination.

By Attorney Hall:

Q. You are Mr. Kenneth M. Harper, sir?

A. Yes.

Q. Are you the same Mr. Harper who is a member of the jury commission of Dallas County, Alabama?

A. Yes.

. . . . .

Q. How have you been able to fill your jury roll, sir?

A. With assistance from people that lived in the different beats. Furnished us with names of the ones that they thought were qualified or capable of jury duty. And then by knowledge of city and county individuals that I have known and have been thrown with. And the same is true with Dr. Thomas and Mr. Hill.

Q. Let's see if we understand each other. Did your jury commission officially contact persons in the various pre-[fol. 349] cincts and ask them to supply you with names?

A. Yes. Yes.

Q. Did you write these persons letters?

A. No. No. "In cases where we'd know somebody, we'll say that was familiar with folks in Plantersville, we asked them if they would furnish us with names of those people in Plantersville that they thought were capable of doing jury duty. And we did that in every beat or every area, and we used them to make recommendations to us.

Q. Now, did you contact colored and white people?

A. In the city we did, yes.

Q. How about the other precincts?

A. No, we felt that the white men we had contacted in the county knew them and could give us the names of them.

Q. Now, the white people you contacted in the various precincts, did they hold some official position?

A. No. Some did and some didn't. Some were private citizens. We had any number. Mr. Hill would contact

some and I would and Mr. Thomas would contact some, and they would come with the lists.

Q. What recommended these persons to you, sir, as to their knowledge of the population of their various precincts? What yard stick did you use?

A. First, I wanted to know they were somebody I thought something of, that I could trust them to do the job that I was supposed to do. I was taking responsibility for the job, but I was asking them to assist me, and I asked somebody I thought was of good character and had the welfare of the community at heart and would try to give me names of people that would do honor to the county.

Q. Did you use any official records at all in the rural precincts?

A. Voters list in some cases.

Q. Do you recall any particular cases?

A. Not in any particular cases. Just used that, and then I had the aid of the county agent.

Q. That is the white agent?

A. Yes.

Q. Did you seek the aid of the colored county agent?

A. No.

Q. Do you have more negroes than white people in the rural precincts?

A. Yes.

Q. What would be your opinion?

A. Probably five to one in the county.

Q. Now, Mr. Harper, how would you check the names furnished you by these persons, as to their qualifications?

A. Well, in a good many cases I was familiar with them myself and I didn't know anything against them, and if they recommended them then that was satisfactory to me. If I did not know anything against them and Mr. Hill and Mr. Thomas didn't, and these persons thought they met the [fols. 350-351] qualifications, then we accepted them.

Q. How did you ascertain they met the qualifications set out in the statute?

A. Just by the fact that the man submitted the names to me. He was, so to speak, my agent. I had the utmost confidence in him.

Q. Did you furnish that man with a list of the qualifications?

A. No.

Q. How would he know?

A. I could still cut out the names not fit to serve.

Q. How would you know?

A. When somebody says do you know so-and-so it might not come to my mind, and then they'd say you know he does so-and-so, and that refreshes my memory, and by that procedure we were able to get at it.

Q. You say you would know, the people submitted to you from these various rural communities personally?

A. Pretty well. I'd know their family name and the reputation of their families.

. . . . .

[fols. 352-353] Q. Mr. Harper, according to your testimony, you don't know half of the people listed there for Plantersville.

A. If that was what it showed. I never said I knew them all.

Q. Well, now, sir, you were mainly responsible for that precinct, isn't that true?

A. As much so as of any other.

Q. You mean you were no more responsible for that than any other?

A. No. No. Well, I said I would try to find someone to help me with it.

Q. So, you were responsible for getting information for this particular precinct?

A. Yes.

Q. You didn't supply your agent with a list of the qualifications?

A. I told them just verbally about what we had to have. I told them we needed jurors, and I might have quoted a few qualifications. And they knew themselves. And that is what I asked them for.

Q. And did you tell them about all the disqualifications?

A. Oh, no. I don't know that I did. I didn't make any record.

. . . . .

[fol. 354] Q. Mr. Harper, is it a fact that there are a large number of names listed on this jury roll and no occupation listed for them?

A. I don't know. I haven't checked it. It could be. I don't say that it is or isn't.

Q. In your beat, Union Beat, sir, is it your opinion that you know all of the names listed on the jury roll?

A. I know a large number, naturally.

Q. Is there any other precinct in this county that you feel you know a large number, I'll say at least a majority, of the names listed?

A. I wouldn't make that statement.

Q. Do you know Mr. W. P. Swift, Jr.?

A. Yes.

Q. What is his occupation?

A. Pharmacist.

Q. He is a pharmacist?

A. Yes.

Q. Will you examine Exhibit X, the present jury roll of Dallas County? I direct your attention to Precinct No. 36, Selma, and see if you find the name of W. P. Swift, Jr.

A. Mr. Swift can also be listed as an owner of the business.

Q. Yes, sir.

A. I don't think he claims his exemption, and it may have been he said it was perfectly agreeable to put his name in there, W. P. Swift, Jr.

Q. Is he listed there?

A. Yes.

Q. On the present jury roll of Dallas County, Alabama?

A. Yes, that's right.

Q. Do you know whether or not he is a licensed pharmacist?

A. Yes, he is.

Q. Did you know it at the time the present jury roll of Dallas County, Alabama, was prepared?

A. Yes.

Q. Is he white or colored?

A. White.



[fol. 355] Q. I show you this book, Defendant's Exhibit A, purporting to be the jury roll for Dallas County, Alabama, for the years 1951 to sometime in October, 1953, and ask you if this was the jury roll of Dallas County, Alabama, at the time of the hearing that we just asked you about?

A. Yes.

Q. Is this the book that you examined, sir?

A. Yes.

Q. In an effort to tell me how many negroes were—

A. (Interrupting) I don't remember whether I examined the book or the cards. I don't remember which it was.

Q. And you don't remember how many you found on the jury roll?

A. No, I do not.

Q. But you testified there were how many?

A. Around thirty.

[fol. 356] Q. Now, sir, in the new jury roll for Dallas County, Alabama, certified to by yourself and others as of October 17, 1953, how many negroes would you say are listed therein?

A. 250 in round figures.

[fol. 357] Cross examination.

By Solicitor Hare:

Q. Have you at any time, personally, or since you have been a member of the jury commission of Dallas County, arbitrarily or systematically discriminated against members of the negro race in forming a jury roll?

A. I have not.

Q. Or in preparing a jury box?

A. I have not.

Q. Mr. Harper, since you have been a member of the jury commission have you acted as part of any scheme or plan to discriminate against members of the negro race in the compilation of the jury roll or putting names in the jury box of Dallas County?

A. I have not.

# Redirect examination.

By Attorney Hall:

Q. Mr. Harper, have you at any time, in concert with the other members of the jury commission or alone, decided to include negroes on the jury roll of Dallas County, Alabama?

A. No, haven't said we are going to—to talk it out that we were going to, not any more than we said we weren't, we didn't say we were.

Q. I see. Do you recall how many the total number of names on the jury roll for Dallas County for the - 1951 until 1953 was?

A. Thirty.

Q. The total number of names, white and colored.

A. Oh! Seems to me something like 1,200, but I don't remember.

Q. And in your best judgment or according to the State's stipulation, you found only the names of three persons whom you definitely identified as negroes?

A. Right.

Q. What is the total number of names on the new jury roll, the present jury roll as of October 17, 1953?

A. I think it is 1,700 in round figures: 1,500 whites and 250 negroes.

Q. How did you arrive at those figures? How do you know there are 250 negroes?

A. Because we counted them.

Q. How did you count them?

A. Just as we put them in.

Q. How did you know they were negroes?

A. Because I knew it when we were putting them in there.

[fol. 358] Q. Are you referring to the jury box or the jury roll?

A. Both.

Q. When you put them on the jury roll, how did you know they were negroes?

A. Because we selected them to put on the roll.

Q. Did you select them?

A. Yes.

Q. When did you select them?

A. At that time, when we were working up the box.

Q. That was in October, 1953?

A. Right.

Q. Was that during the time when there were certain motions pending before this Court?

A. Partly.

Q. In case No. 8009, wherein William Earl Fikes had moved this honorable Court to quash indictments then pending against him, on the grounds that the jury which indicted him had not been properly organized and that his constitutional rights had been violated?

A. Partly. I don't know which part. We worked up part of it, and we were a week or ten days finishing. That's the way it was done. We started in October and officially finished on the 17th day of October.

Q. I see. You counted the names on the jury roll which were negroes?

A. That's right.

Q. Would you be able to select them?

A. I did select them day before yesterday. 190, I understood you to say.

Q. And how do you know they are all negroes?

A. Yes, that's what I testified to the other day. Same thing I testified to the other day.

Q. Do you recall what you testified?

A. I knew some personally and some by where they lived, and some by name, and some by his occupation, and some by the process of elimination. I knew when we put them in there, but like I didn't know all the folks in the Plantersville Beat, we were assisted in that.

Q. You were assisted in selecting names of negroes?

A. That's right.

Q. Was it the practice of the gentlemen who assisted you to include the names of negroes? Has that been their practice since 1951?

A. No, not since '51.

Q. Was that their practice on the first day of October, 1953?

A. We asked for it, yes. We asked them to assist us in securing negroes names and white for the box.

Q. And you didn't ask any negroes at all?

A. Not then. We did after that.

Q. Did any negroes assist you in preparing the jury roll for Dallas County for 1953?

A. As it stands now, no.

Q. Not a single negro?

A. Not directly. It could be that some of the people we asked consulted them, and as I remember now some of them did.

[fols. 359-361] Q. How do you know?

A. I remember that. Said they talked to some, and they said they would do to put in.

Q. So you had agents helping you?

A. Yes.

Q. And they had agents helping them?

A. Yes.

Q. And your agents—

A. (Interrupting) I just told them over the phone about what these others knew and what I told them.

Q. When was that? Was that after the present jury roll was made up?

A. Yes.

[fols. 362-366]

Recross-examination

By Solicitor Hare:

Q. I will ask you to look at Section 20 of Title 30 of the 1940 Code of Alabama, as amended, "Jury roll and cards", and read that section and tell me when the jury commission is required to make up a roll by law in Alabama.

A. (Reading from the Code) "The jury commission shall meet in the court house at the county seat of the several counties annually, between the first day of August and the twentieth day of December, and shall make in a well bound book a roll containing the name of every male citizen living in the county who possessed the qualifications herein prescribed and who is not exempted by law from serving on juries."

Q. Now, meeting that statute, you just testified that you

met in the period that is provided by law for you members of the jury commission to meet?

A. Yes, sir.

Q. And I will ask you if your meetings were held in pursuance of that section of the Code?

A. Yes.

Q. Now, the law does require the jury commission to meet within the period between the first day of August and the twentieth day of December of each year and prepare a new jury roll?

A. Yes.

Q. And I will ask you if Exhibit X, the jury roll of Dallas County, Alabama, 1953, which was certified to in October, 1953, is the roll that you prepared at that time and in pursuance of that section of the Code?

A. Yes.

[fols. 367-374] W. C. McCain, recalled to the stand, testified further as follows:

Direct examination.

By Attorney Hall:

Q. State your name, please.

A. W. C. McCain.

Q. Mr. McCain, you have testified previously in this hearing?

A. Yes.

Q. And you are sheriff of Dallas County, Alabama, are you not, sir?

A. That's right.

Q. And have been since 1946?

A. Yes.

Q. Previous to that time, were you deputy sheriff of Dallas County, Alabama?

A. Yes.

Q. How long were you deputy sheriff?

A. About five years.



[fol. 375]

Cross-examination.

By Solicitor Hare:

[fol. 376] Q. Now, Mr. McCain, are you usually present when juries are drawn in Dallas County?

A. I am required by law to attend all sessions of Court and I haven't missed one in the last eleven years.

Q. And you are required to be present when juries are drawn?

A. Yes.

Q. Have you been present on all occasions when juries have been drawn for the county?

A. For the past eleven years, yes, sir.

Q. Who draws the juries in the county?

A. The Judge.

Q. Where does he draw them from?

A. From his bench—do you mean where does he draw the venire? He draws them in the Circuit Clerk's office in the court house, in my presence and in the presence of the Circuit Clerk.

Q. Are there usually other people there?

A. Always someone in there. Other lawyers. And the lawyers are required to be present for the drawing of capital cases.

Q. Just explain how the Judge draws the cards from the jury box.

A. The Judge reaches into the jury box and extracts one card and hands it to the clerk.

Q. Does he usually read that card?

A. He reads the name out aloud and then hands it to the clerk, who stacks them in piles of five and keeps the tally of the number drawn.

Q. Have you ever seen a circuit judge withdraw a card from the box and ascertain whose name is drawn and make any disposition of it, other than hand it to the circuit clerk for the venire?

A. I have never seen him discard one or put it back in the box. I have made the remark that that person is dead, but he still handed it to the clerk, all that he draws out of the [fol. 377] box.

Q. Have you ever seen the circuit judge manipulate or

employ any device in drawing a jury in Dallas County, manipulate the cards or use any device?

A. Only three judges I have worked with, and they put this one right hand (holding up right hand) in the box and drew one card out at a time, and called the name out aloud and handed it to the circuit clerk.

Q. Now, Mr. McCain, over the past eleven years, have you ever known a negro to be drawn out of that box?

A. I have, sir.

Q. Over what period of time?

A. Well, all during the time.

Q. For eleven years?

A. Yes, sir, all the time.

Q. Have you had occasion to have venires handed to you for service that contained the names of negroes on the venire?

A. Yes, sir.

Q. Over what period of time have you had those?

A. Over eleven years.

Q. I will ask you if you were present when the venire was drawn for the November session of Court in Dallas County, Alabama, from which the November grand jury was drawn?

A. I was present when it was drawn.

Q. I will ask you if the names of any negroes were drawn on that venire?

A. Yes, sir.

Q. I will ask you if those names went on the venire?

A. They were on the writ of venire issued to me.

Q. Were those people served?

A. They were served if we could find them. All the parties on there.

Q. I will hand you this document, which I will ask to be marked for identification only as State's Exhibit 2 (hands said document to reporter to be marked for identification only) which purports to be Venire No. 3, State of Alabama, Dallas County, in the Circuit Court of Dallas County, Alabama, Returnable Monday, November 9, 1953, and ask if you have ever seen that before?

A. Yes, sir, it has my endorsement on it.

(Above described venire is marked for identification only Plaintiff's Exhibit 2)

Q. And was that the venire that was drawn for the November session of Court in Dallas County, Alabama, [fol. 378] 1953?

A. Yes, sir, November 9, 1953.

Q. Are the names of any negroes on that venire?

A. Yes, sir, there are.

Q. Do you know them?

A. I believe I can identify them, yes, sir. It would take me a little time. The first one is No. 3, Owen E. Butram—B-u-t-r-a-m.

Q. Was he found?

A. Not found. Next, A. C. W. Raiford, No. 9, was not found. No. 25, Willie Hatcher, was executed.

Q. Did he answer to his subpoena?

A. He did.

Q. Did he appear in the Circuit Court?

A. Yes, sir, he did. No. 32, William Fair, appeared in Court for jury duty. No. 36, Otto Hatcher, appeared for jury duty. No. 39, Hudson Strothers—S-t-r-o-t-h-e-r-s, appeared in Court for jury duty. No. 66, Browder Martin, wasn't found.

Q. Is that a white man?

A. I am not sure about that. I don't know him and we didn't find him.

Attorney Hall: Read that name again.

The Witness: B-r-o-w-d-e-r M-a-r-t-i-n. Just shows Cohen & Gross, and I am not sure about him.

Q. Any others?

A. Herbert Martin, No. 70.

Q. Did he appear?

A. Yes, and spent the week here in attendance. No. 76, Mark Sherrer, appeared.

The Court: He didn't serve, as he had Federal conviction. I told you about his raising his hand.

Solicitor Hare: I hand you this paper, which I will ask you to mark as State's Exhibit 3 for the purpose of identification only.

(Above described paper marked for identification only Plaintiff's Exhibit 3)

Q. (Hands said Exhibit 3 to witness) Which purports to be venire No. 4, Dallas County, Alabama, December session, 1953, and ask you if you have ever seen that before?

A. Yes, sir.

Q. What is that?

A. That is a writ of venire, directed to me for Court December 7, 1953.

Q. Now, Mr. McCain, were you present at the time that venire was drawn by the Circuit Judge of Dallas County?

A. I was.

Q. And I will ask you to look that over and tell me if those names are the same persons whose cards were drawn at that time by Judge Callen?

A. Yes, sir, this is the same.

Q. And that those cards were drawn from this jury box, which is Defendant's Exhibit Y?

A. Yes, sir.

[fols. 379-387] Q. Now, Mr. McCain, I will ask you if in the drawing of that jury—just explain how the Judge drew those cards.

A. This jury was drawn in my presence, and in the presence of the Circuit Clerk and the solicitor and all the capital defendants for the next week and several lawyers.

Q. And that was in the Circuit Clerk's office in Dallas County, drawn there?

A. Yes, drawn on about the 19th. of November. That is when it was handed to me. It may have been handed to me the day before the 19th. for the December 7 session of Court and we started to make out our slips on the 19th. of November.

Q. I will ask you to look that venire over and see if you see the names of any negroes there.

A. I believe No. 9 is a negro. That was executed by one of my deputies. Willie Smith, No. 9. No. 19, Morgan Barnes.

Q. Is he a negro?

A. Negro. And No. 28, James Siegler, I am not sure about him.

Q. You don't know whether he is white or colored?

A. No, I don't. No. 34, William T. Whiten, I am not sure about that one. No. 35, Young Childers, is a negro. No. 40, John Willey, W-i-l-l-e-y, is a negro. No. 43, Tom Waller, is a negro. No. 45, William K. Smith, I am not sure about him. His address is listed on Mechanic, and if it is on the south of Mechanic he is a negro. No. 47, Charlie Rascoe, Jr., is a negro. No. 51, Douglas Harris. I believe to be a negro but I am not sure. No. 71, Washington Goodwin, he is a negro. That's all, I think. I got some specials.

Q. I hand you the specials in the case of Herman King and ask you to look at those.

A. No. 77, Alex Calhoun and 78 I am not familiar with. I don't know whether that is a negro or not. Off-hand, I'd think it was.

Q. And I'll hand you the special venire in the case of Paul McCurtis and ask you to look at those special jurors there.

A. One out of three there is a negro, Herman Crum, Tyler, No. 78.

Q. What you are testifying to is just your personal knowledge of these people whose names are on there?

A. Yes, sir.

Q. And that is the regular venire and two special venires for the week of December 7, 1953?

A. Yes, sir.

[fol. 388]

Recross-examination.

By Solicitor Hare:

Q. Mr. McCain, if you had fifty of them for civil week of Court, would there be any assurance that one would serve in the trial of a civil case?

A. It is virtually left up to the attorneys to select the jury. No, if there were 100, and seventy-five of them were negroes, I wouldn't have any assurance that they would serve then.



Q. Were you present when the names of those jurors who answered to the call of the venire and qualified were put in the hat over there?

A. Yes, sir. The clerk sits over there (indicating clerk's [fol. 389] desk) and she puts the names in the hat. And I was present in Court.

Q. Did the Judge put any kind of cover over that hat when he drew those names?

A. Yes, there was a handkerchief over the hat. I can state this: when the clerk put the names in the hat I was standing aside, and the clerk brought the hat up and put it on the Judge's bench, and there were eighteen names drawn out of that hat by the Judge. Then the hat was pushed aside and left covered while the Judge charged the grand jury. Then the Judge directed the grand jury to retire to their room and begin their deliberations.

Q. Did he draw any other names from that hat?

A. After the grand jury got out there were six extra chairs. I removed the six chairs. And after the grand jury left the court room the Judge drew the hat over, still with the same cover over it, and drew the names out and organized the petit juries.

Q. Were any negroes drawn on those petit juries?

A. Yes, sir, after the eighteen grand jurors were drawn, they were drawn on the petit juries and seated in the jury box.

Q. Have you seen them drawn on petit juries in times past?

A. Yes, sir, I have.

Q. In the empaneling of petit juries in Dallas County?

A. Yes, sir.

Q. And they have taken their seats up there (indicating jury box) with the rest of the jurors?

A. Yes, sir.

Q. But in the trial of a case in Dallas County, you never saw one serve on a petit jury?

A. No, sir.

Q. And the selection of the petit jury is left entirely to the selection of the plaintiff and defense counsel?

A. Yes, sir.

# Redirect examination.

By Attorney Hall: ✓

Q. I don't believe I heard you say just how the procedure was done. How did the cards get in the hat?

A. There are no cards. The clerk makes up a list of the jurors—I have seen it done time and again. She removes the names of the ones who are excused from that list. She cuts them with a pair of scissors, and then tears them off and places them in the hat, all except those who were disqualified on account of age or something and those who were excused. The clerk sits down and takes out those names that were disqualified and puts them aside. Then what names she has left, all of those names go in the hat. [fol. 390-408] Q. I don't understand what you mean. How does she first make up a list?

A. On a sheet of paper.

Q. From what information?

A. From the venire. The names are listed by name and number as they appear on the venire. I believe she uses legal size sheets of paper. She takes a pair of scissors and clips along the top and bottom of each name. If No. 38 is disqualified, she tears that name off and places it in this box where she keeps her paraphernalia. She tears off and puts aside those that are disqualified. Then she proceeds and starts to tear all qualified names off and places them in a hat. Places all of the qualified names in a hat.

Q. And then from that hat—you testified that his Honor proceeds to cover the hat?

A. Yes, the hat was covered. I don't recall who covered it. The hat was covered with a handkerchief. And the Judge runs his right hand inside of the hat and withdraws one name at a time, only one, and places it on the desk. The name is called out in open Court, then another name is drawn from the hat and called out, until eighteen names have been called, and the clerk keeps tab for him. Then he pushes that hat just a little aside and gives our grand jury the various charges, and then instructs them to go to the grand jury room and start their deliberations. And immediately after they get put, the Judge starts drawing the petit juries, getting twelve for each one. He calls the first

twelve up and lets them take their seat, and tells them they will be known as jury No. 1, and the clerk places those names in an envelope with Jury No. 1 marked on it. And he goes on right through the same procedure with jury No. 2, and so forth, Jury No. 1, Jury No. 2, 3 or 4 for this week. That's the way it is practiced here. It has been practiced here to my knowledge, I have attended every session of court for over eleven years, and lots of them in the years prior to that. The way we practice it here, that's been the policy and that's the way they are organized. And that hat wasn't messed with, and the names just drawn out of there, and they took them just like they come: eighteen for the grand jury and what was left for the organization of the petit juries.

Q. That is the method usually used. You mean that is the way it has been done?

A. That is the way it has been done for eleven years, and my hat has never been used. The hat belongs to some lawyer, or maybe some juror goes to get his hat and I'll say, "I'm sorry, but your hat is in service. You'll have to wait until the Judge gets through."

[fol. 409] MRS. PAULINE K. BARNES, recalled to the stand, testified further as follows:

### Direct Examination.

By Solicitor Hare:

Q. You are Mrs. Pauline K. Barnes?

A. Yes, I am.

Q. And you are the clerk of the Circuit Court of Dallas County, Alabama?

A. Yes.

Q. And you have testified previously in this hearing?

A. Yes.

Q. Mrs. Barnes, I will show you this book, State's Exhibit 1, bearing on the cover thereof, "Minutes New Series, 11, Dallas Circuit Court". Can you identify that book?

A. Yes.

Q. What is that?

A. Minutes of the Circuit Court of Dallas County, Alabama.

Q. Volume eleven?

A. Yes, sir.

Q. Mrs. Barnes, are you usually present when juries are drawn in Dallas County?

A. Yes.

Q. Who draws the jury?

A. The Judge.

[fols. 410-445] Q. What does he draw them from?

A. The jury box.

Q. What does he draw out of the jury box?

A. Cards.

Q. Cards. Mrs. Barnes, have you seen him draw practically all of the juries since you have been with the Circuit Court?

A. Yes.

Q. And have you at any time, Mrs. Barnes, ever seen a Circuit Judge in drawing a jury withdraw a name and set it aside or put it back in the box or make any disposition of it, other than handing it to you to go on the venire?

A. I have not.

Q. And I will ask you, Mrs. Barnes, in making up the venire, have you ever omitted any cards handed you by the Circuit Judge?

A. I have not.

Q. You have seen these cards pulled from the box?

A. Yes.

Q. Have you ever seen any mark or identification on them that would serve to identify the names on the cards as being white or negro?

A. No, I have not.

Q. Mrs. Barnes, you are the official custodian of the records of the Circuit Court of Dallas County, Alabama, are you not?

A. I am.

Solicitor Hare: That's all.

[fol. 446] MRS. PAULINE K. BARNES, recalled to the stand, testified further as follows:

**Direct Examination.**

**By Attorney Hall:**

Q. Are you the same Mrs. P. K. Barnes who has testified in this case previously?

A. I am.

Q. You are the same Mrs. Barnes who is clerk of the Circuit Court of Dallas County, Alabama?

A. That's right.

Q. Were you clerk of the Circuit Court of Dallas County, [fols. 447-453] Alabama, in the month of October, 1953?

A. I was.

Q. Are you familiar with the case No. 8009, State of Alabama versus William Earl Fikes?

A. I know a little something about it.

Q. Will you tell us if that cause was pending in this Court during the month of October, 1953?

A. I believe it was.

Q. Will you tell us what motions or pleadings had been filed in that cause?

A. You filed a motion to quash the venire, and you filed a motion to quash the indictments—and I don't know what else you filed.

[fols. 453-A-525] Q. Do you know what the final result of that hearing was?

Solicitor Hare: We object to that. Incompetent, irrelevant, immaterial.

The Court: Over-rule the objection.

The Witness: Well, I believe that the Court granted those motions.

Q. And do you know the date of his Honor's judgment?

The Court: October 9, 1953.



[fols. 526-527] IN THE CIRCUIT COURT OF DALLAS COUNTY,  
ALABAMA

Charge: Burglary in the First Degree

TRANSCRIPT OF TESTIMONY ON JURY TRIAL—

December 7, 8, 9, 1953

Before: Hon. W. E. Callen, Trial Judge, and A Jury.

APPEARANCES:

Hon. James A. Hare, Circuit Solicitor.

Hon. Henry F. Reese, County Solicitor.

Hon. Thomas G. Gayle, Special Prosecutor of counsel,  
Attorneys for the State.

Hon. Peter A. Hall, Hon. Orzell Billingsley, Jr., of  
counsel, Attorneys for the Defendant:

Gertrude M. Bailey, Official Court Reporter for the  
Fourth Judicial Circuit of Alabama.

[fols. 528-529] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: The first case on the docket: The State of  
Alabama versus William Earl Fikes, number 8072.

Attorney Hall: The defendant pleads not guilty and not  
guilty by reason of insanity.

[fol. 530] The Court: I will stipulate with you to this  
effect: that the venire had thereon the names of several  
members of the colored race, but that the jury empaneled  
to try this case has on it no members of the colored race.

Solicitor Hare: I would like the record to show they  
were struck by both the State and the defendant.

The Court: Any objection to that?

Attorney Hall: No, sir.

The Court: It is further stipulated by and between counsel  
for the defendant and the solicitors for the State of  
Alabama that the members of the colored race who were  
on the venire for the present week of Court were stricken  
both by counsel for the defendant and the solicitors for  
the State.

[fol. 531] MRS. JEAN HEINZ ROCKWELL, being duly sworn, testified as follows:

**Direct Examination.**

**By Solicitor Hare:**

Q. What is your name?

A. Jean Heinz Rockwell.

Q. Where do you live?

A. 803 Mabry Street.

Q. And how long have you lived there, Mrs. Rockwell?

A. Since the first of February.

Q. You are Mrs. Rockwell, are you not?

A. Yes, I am.

Q. And you are the wife of Almon S. Rockwell?

A. Yes.

Q. You say that you have lived there since the first of February?

A. Yes.

Q. Mrs. Rockwell, were you living there in April of this year?

A. Yes, I was.

Q. One night in April of this year, did you have occasion to find an intruder in your house?

A. Yes, I did.

Q. Do you recall when that was?

A. It was April 24, Friday night.

Q. And approximately what time of night was it when you saw this intruder?

A. Around ten-twenty.

Q. Now, where were you at the time, Mrs. Rockwell?

A. I was in my bed.

Q. Was there anyone else there in the house with you at that time?

A. My two children.

Q. Now, Mrs. Rockwell, just describe if you will your house or apartment or whatever your living quarters were at that time.

A. I live in an apartment on the south side of the house, and you come in on a screened porch, and go through the front door into the living room, and on the left you go to

the dining room, and the righthand door out of the living room you go down the hall. And the first door down the hall to the left is the kitchen, and then the babies room and then our room, and right at the back of the hall is the bathroom.

Q. How old were your children at this time?

A. My youngest baby was six weeks old and my oldest baby was seventeen months old.

Q. Now, where was the oldest baby at that time?

A. In the first bed room.

[fol. 532] Q. In the apartment.

A. Yes.

Q. And where were you at the time?

A. I was in my bed in the back bedroom.

Q. Now, was there anyone in the bedroom with you?

A. The smallest child was in the room with me.

Q. That's the six weeks old baby.

A. Yes, sir.

Q. Now, is there any other means of getting in your apartment, other than the front door?

A. There is a back door to the kitchen, and a step that leads to the window to my children's room.

Q. What construction are those steps?

A. They are brick.

Q. And you say those steps lead up under the window to the children's room?

A. Under the window to the children's room.

Q. Now, was Mr. Rockwell there at that time?

A. No; he was not.

Q. Do you remember the condition of the weather that night?

A. It had just begun to rain as I dropped off to sleep.

Q. Yes, ma'am, and what time had you gone to bed?

A. Around ten.

Q. Around ten. Are there any fastenings or locks on your apartment?

A. On the back door I have a latch on the screen door, and I have a chain lock and a Yale lock on my wooden door, my kitchen.

Q. The kitchen, that comes in from the side, doesn't it?

A. Yes.

Q. Do you have a lock on the front door?

A. Yes, I have a Yale lock on the front door.

Q. Are the windows locked, or do you have any way of fastening them?

A. Yes, there are two latches on each window to the children-- room.

Q. Is that on the screen or the window itself?

A. It is on the screen.

Q. On this particular night, were the windows in that apartment up or down?

A. They were down.

Q. It had been raining?

A. Yes, raining.

Q. Now, I'll ask you if the doors were secured that night?

A. They were.

Q. And you say that you had gone to bed and you were in your bed.

A. Yes.

Q. Where did you first see this intruder?

Attorney Hall: We object to that particular phase. I don't believe the witness has testified that she has seen an intruder.

The Court: Sustain the objection.

Q. On this particular night, did you have occasion to see [fol. 533] somebody in your bedroom?

A. Yes, when I woke up.

Q. When you woke up. Around what time was that?

A. Er--around ten-fifteen.

Q. Around ten-fifteen--

A. (Interrupting) Ten-fifteen or ten-twenty.

Q. Where was this burglar?

A. He was sitting on me.

Q. Do you know who he was?

A. No.

Q. Could you describe him?

A. Well, he was of slight build, and he looked to be around in his twenties.

Q. Of slight build and in his twenties. Was he white or a negro?

A. He was a negro.

Q. Did he have anything with him at the time that you saw him?

A. He had a knife at my throat in his left hand.

Q. And you were laying in the bed.

A. Yes.

Q. Did he say anything to you at that time?

A. He told me that he was going to kill me.

Q. He told you that he was going to kill you. What did you do, if anything?

A. I started struggling immediately.

Q. You started struggling. Did you have occasion to see the knife?

A. Yes, that was one of the first things I saw when I woke up. It was right at my throat.

Q. Right at your throat. I will hand you this knife and ask you if you have ever seen that knife before?

A. This is my knife.

Attorney Hall: Your Honor, we assume the State is going to connect this up.

The Court: Yes, sustain.

Q. That is your knife?

A. Yes.

Q. And is that the knife that you saw on that occasion?

A. Yes, it is.

Q. And it was in the hand of this negro who was sitting on you in bed?

A. Yes.

Q. Do you know which hand he held that knife in?

A. It was in his left hand.

Q. Now, Mrs. Rockwell, you testified that he told you that he would kill you.

A. Yes.

Q. What did you do then, if anything?

A. I started struggling. I started struggling as soon as I woke up.

Q. Did you ever get off of the bed?

A. Yes, after we had struggled awhile on the bed the baby cried out, and he glanced over at the baby and I [fol. 534] managed to get off the bed then.

Q. And at that time you managed to get off the bed?

A. Yes.



Q. Where did you go then?

A. Out of my bedroom, into the hall.

Q. Into the hall. Where was he at that time?

A. He was right on me, holding on to me.

Q. He was holding on to you. How were you dressed?

A. I had on pajamas.

Q. You had on pajamas. How far down the hall did you go?

A. I went all the way down the hall.

Q. All the way down the hall. Now, approximately how long is that hall? Do you know?

A. About thirty-five or forty feet.

Q. And where did you go from the hall?

A. Into the living room.

Q. And at the time that you were awakened there, Mrs. Rockwell, was there a light on in your room?

A. Yes, there was.

Q. Was there a light on in the hall?

A. Yes.

Q. Was there a light on in the living room?

A. Yes.

Q. And you say you struggled with him in the hall and into the living room.

A. Yes.

Q. What, if anything, happened in the living room?

A. When we got in the living room he fell over a stool.

Q. Fell over a stool?

A. Yes, fell over a stool and he fell on top of me.

Q. He fell on top of you. And where was the knife at that time?

A. When we fell the knife was still in his left hand at my throat.

Q. Did he say anything to you when he was struggling with you in the hall?

A. Yes. I was screaming and he told me to be quiet, that he was going to kill me if I didn't keep quiet.

Q. That he was going to kill you if you didn't keep quiet. And after you fell in the living room, did he tell you anything?

A. Yes, he again told me if I didn't be quiet he was going to kill me. And then he told me to straighten out.

Q. What did you do at that time?

A. I was screaming, and I saw the knife at my throat and I reached up and grabbed the knife and got it out of his hand.

Q. You got it out of his hand. And what did he do then?

A. He jumped up immediately and ran partly down the hall and out through the kitchen and through the back door.

Q. Was that through the kitchen door?

A. Yes.

Q. Was that door closed?

A. No.

[fol. 535] Q. What did you do? Did you follow him?

A. Yes, I followed him. And when he ran out the back door I fell up against the back door and locked the back door.

Q. Was that door open when he went back to the kitchen?

A. Yes, when I chased him out it was. It was locked when I went to bed.

Q. It was locked when you went to bed, but when he ran out it was already open. He didn't have to open it at that time?

A. That's right.

Q. How was he dressed at that time?

A. He had on a white undershirt and blue-jeans.

Q. A white undershirt and blue-jeans?

A. Yes. No shirt.

Q. Did he have any covering over his head?

A. When I woke up he had a towel draped over his head.

Q. Did he keep that towel draped over his head?

A. Yes.

Q. Did you ever get a chance to see his face?

A. It seems that I saw one of his eyes.

Q. What build was he?

A. He was real thin.

Q. Real thin. Was he what you would term slender, or not?

A. He was real slender.

Q. And he had the knife in his left hand?

A. Yes.

Q. Was that throughout the encounter with you?

A. Yes.

Q. Mrs. Rockwell, you said the windows were closed when you went to bed. After he left there, did you have occasion to examine the window in the children's room?

A. Yes.

Q. What, if anything, did you find with reference to that window?

A. The screen was open and the window was open, and there were holes in the screen.

Q. There were holes in the screen where?

A. Over where the latches were.

Q. Had those holes been there all the time?

A. No.

Q. And the window was open?

A. Yes.

Q. And when he left the door was open?

A. Yes.

Q. And there are two doors?

A. Yes, a screen door and a wooden door.

Q. And they were both open?

A. Yes.

Q. Mrs. Rockwell, where had you last seen your knife that night?

A. In the kitchen.

Q. And the knife that I showed you is your knife?

A. Yes.

Q. And where had you left it that night?

A. In the kitchen.

Q. Where is the kitchen with reference to the children's room?

A. Right next to it.

[fols. 536-552] Q. How would you go from the children's room to the kitchen?

A. You would have to come out into the hall for a little ways.

Q. There is no door from the children's room to the kitchen, and you would have to come out in the hall and back in the kitchen?

A. Yes.

Q. Now, you say that was the 24th. of April of this year?

A. Yes.

Q. And that was in Dallas County, Alabama?

A. Yes.

Q. Did you testify before the grand jury in this case?

A. Yes, I did.

Q. And the events you have testified to here, did they occur prior to the time you testified before the grand jury?

A. Yes.

Solicitor Hare: That is all.

[fol. 553] J. WILSON BAKER, being duly sworn, testified as follows:

Direct Examination.

By Solicitor Hare:

Q. What is your name?

A. Wilson Baker.

Q. Where do you live, Mr. Baker?

A. Selma, Alabama.

Q. And what do you do?

A. Captain of Police Department.

Q. And were you captain of the Police Department throughout this year, from January, 1953, up to the present time?

A. Yes, sir.

Q. Mr. Baker, do you know the defendant in this case, William Earl Fikes?

A. Yes, sir.

Q. When did you first have occasion to see or to know him?

A. In the City jail on May 16 of this year.

Q. Was that on a Saturday or Sunday?

A. On a Sunday.

Q. On Sunday in May of this year?

A. Yes, sir, 16th. or 17th. It was on Sunday.

Q. Mr. Baker, did you have occasion to talk to William Earl Fikes while he was in the custody of the police there?

A. Yes.

Q. Did you have occasion to talk to him on Monday, following that Sunday?

A. Yes, sir.

Q. In the latter part of that day, did you have occasion to talk to him?

A. Yes, sir.

Q. Where did you talk to him?

Attorney Hall: Your Honor, please, may we make this motion? We are going to object to any talk that Captain Baker may have had with this defendant at this time, as it may or may not have been judicial, and at this time it is incompetent and immaterial.

Solicitor Hare: I am just asking preliminary questions.

The Court: Over-rule.

Attorney Hall: We except to your Honor's ruling.

Q. Did you have a conversation with him that Monday afternoon?

Attorney Hall: If your Honor please, we object to the manner of these questions. It is leading.

The Court: Over-rule the objection.

Attorney Hall: We reserve an exception.

The Witness: Yes, sir.

Q. Where was that conversation?

A. In Kilby Prison in Montgomery.

Q. Who was there at the time that you talked with him?

A. Sheriff McCain, Mr. Sowell from the State Toxicologist's office, Lt. Ware from our department, and of course the defendant.

Q. Now, at any time that you talked to William Earl Fikes, did he talk to you at any time?

A. Yes.

Q. Did you have a conversation at any time to make a recording of what he said to you and what you said to him?

A. Yes, sir.

Attorney Hall: We object to this particular line of questioning.



The Court: Over-rule.

Attorney Hall: Exception.

The Witness: We made several recordings. On Monday evening, and some on Thursday afternoon of that same week, and probably that Monday, and some on Saturday of that week.

Q. Mr. Baker, I will ask you to look at that machine over there.

A. (Witness walks over to recording machine previously testified about by William D. Powers) All right.

Q. Are you familiar with that machine?

A. Yes, sir.

Q. Are you familiar with the tape that is on it?

A. Yes, sir.

Q. Who put that tape on?

A. I did, sir.

[fol. 555] Q. Are there any voices recorded on that tape?

A. Yes, sir.

Q. Whose voices are recorded on that tape?

A. Mine and William Earl Fikes'.

Q. When was that particular recording made?

Attorney Hall: If your Honor please, we are going to ask the Court to exclude the jury at this time. The defendant would like to take an objection to this particular line of questioning and objects to the manner in which this witness is being questioned. We feel that the jury's presence in this Court would be prejudicial to the defendant's interest.

The Court: Gentlemen of the Jury, you may retire to the jury room for a few minutes. If you would like to send one of the deputies for Coca Colas, you are at liberty to do so.

(Jury retires to the jury room.)

(Attorney Hall and Solicitor Hare confer with the Court.)

The Court: Take a ten minutes recess.

(Court stands in recess for a few minutes, and then called to order and the jury returns to the jury box, and the trial is resumed.)

(Captain J. Wilson Baker returns to the witness stand.)

Q. I asked you if you made any recordings of conversations had with the defendant?

A. Yes, sir.

Q. When, particularly?

A. On Thursday afternoon.

Q. What date was that?

A. On May 21.

Q. What day of the week was that?

A. On a Thursday.

Q. And where was this recording made?

A. In the Chaplain's office at Kilby Prison.

Q. Who was present there at that time?

A. Lt. Ware of the Selma Police Department and the defendant and myself.

Q. Were you the only persons present at that time?

A. Yes, sir.

Q. Now, at that time and at that place and in the presence of those parties, did the defendant make any statement to you?

A. He did.

Q. Had you or anyone within your presence or hearing at this time and at this place and on this occasion made any threats or show of violence against him to get him to talk?

A. No, sir.

Q. Was there any show of force or had any threats been made against him to get him to talk?

A. No.

Q. Had any reward or hopes of reward or inducements been held out to him to get him to talk?

A. No.

[fol. 556] Q. Had he been promised that any statement made by him would not be used against him?

A. No.

Q. Were any rewards or hopes of reward or inducements held to him to get him to talk?

A. No, sir.

Q. At that time and at that place did you make a recording of your conversation with him?

A. I did.

Q. On what did you make that recording then?

A. On a tape recorder.

Attorney Hall: If the Court please, at this time we are going to interpose an objection to this entire procedure and this entire line of questioning. It has not been shown that this defendant was arrested, held, bound, docketed, that he was charged with any crime. Nothing has been shown as to why he was in Kilby Prison. While this witness has stated that he made certain statements to him, the State has not shown at any time that it or any officer of Dallas County or the City of Selma had the right to question this defendant. It has not shown that the defendant had the advice of counsel or that he had been advised of his right to counsel. It has not been shown that this defendant has been accorded all of his rights under the laws and constitution of the State of Alabama or under the constitution of the United States and the Fourteenth Amendment with reference to due process of law and equal protection of law.

The Court: Sustain the objection.

Q. Was this defendant under arrest at that time?

A. He was.

Q. Was he in the custody of the City Police of the City of Selma, Alabama?

A. He was.

Q. This recording was made in the Chaplain's office at Kilby Prison?

A. It was.

Attorney Hall: We object.

Solicitor Hare: He will have the opportunity to take this witness if he wants to on voir dire.

Attorney Hall: We didn't quite understand the State's objection to our objection. We do insist that we have the right to examine the witness.

The Court: Yes, sir, proceed under voir dire.

Solicitor Hare: If I may bring him up to the thing?

The Court: All right, proceed, Solicitor.

Q. And at the time you testified to and in the presence of [fol. 557] the persons you testified were present, he did make a statement?

A. Yes.

Attorney Hall: If your Honor please, we object to leading.

Solicitor Hare: They are preliminary questions, your Honor.

The Court: Over-rule.

Attorney Hall: We except, sir.

Q. How was the conversation recorded, Mr. Baker?

A. On a tape recording machine. Microphone hooked to the tape recorder and placed between William Earl Fikes and myself.

Attorney Hall: We object to any conversation or mention of any conversation or tape recording until it is shown that this defendant was properly arrested and——

Solicitor Hare: (Interrupting) There is no law that says anybody has to be arrested when he makes a statement.

The Court: Over-rule.

Attorney Hall: An exception, sir.

Q. Did you make a recording of his conversation with you?

A. I did.

Q. And you made it on what machine?

A. Tape recorder.

Q. Yes, sir. And I'll ask you who operated that tape recorder?

A. I did.

Attorney Hall: Until it is shown that he was under arrest——

The Court: Mr. Baker has stated he was under arrest and in the custody of the Police Department of the City of Selma.

Attorney Hall: We requested the opportunity of examining him on voir dire.

Solicitor Hare: I was just going to try to get him up to the introduction of it and let you take him on voir dire.

Attorney Hall: Take him now?

The Court: All right.

## Cross Examination.

By Attorney Hall:

Q. Captain Baker, during the month of April, 1953, you were captain of police of the City of Selma, Dallas County, Alabama?

A. That's right.

Q. As such official, you were concerned with the incidents involving this defendant, William Earl Fikes?

A. Yes.

Q. Was he then in the custody of the City of Selma officially?

A. When?

Q. At any time during April, 1953?

A. No, not in April.

Q. Was he in the custody of the officials or police of the [fol. 558] City of Selma in May, 1953?

A. Yes.

Q. On what day, sir, did you first obtain custody of this defendant?

A. I first saw him on Sunday, May 17, 1953.

Q. Where did you see him on that day?

A. In the City jail of the City of Selma in the City Building in Selma.

Q. What was the occasion of his being there, sir?

A. He had been picked up and arrested by officers of our department, booked at the desk and placed in jail.

Q. For what breach of the peace?

A. On an open charge of investigation.

Q. Open charge of investigation. Captain, what do you mean when you say an open charge of investigation?

A. He was booked for investigation of burglaries and attacking.

Q. What do you mean when you say an open charge of investigation?

A. He was booked on an open charge of investigating the burglaries we'd been having.

Q. When you book a man on an open charge of investigation, does it mean that you suspect him of a particular crime?



A. Oh, yes. In this instance, yes, he was suspected of a particular crime.

Q. And he had not been charged with a specific charge?

A. Not on Sunday.

Q. Had he been charged with the commission of a specific charge when you first saw him?

A. No.

Q. Or on the occasion of your first talking to him, had he been charged with a specific crime?

A. No.

Q. What was the reason for his being in the jail?

A. He had been seen walking through some alleys.

Q. Do you know this?

A. I was told that. It was on the arrest sheet.

Q. It was on the arrest sheet that the arresting officers had seen him walking up some alleys?

A. I think so.

Q. Are the arresting officers here in Court?

A. Oh, yes, yes, I think so.

Q. Have they previously testified in this cause?

A. I think on the motions last week.

Q. Are your policemen Bailey and Pressley here in Court?

A. I don't know. I see Mr. Bailey.

Q. Is that the same officer who testified previously?

A. Yes.

Q. He was one of the arresting officers?

A. Yes.

[fol. 559] Q. When you first came in contact with this defendant, you yourself didn't know of any reason for his being there other than what you say was on the arrest sheet?

A. That's right, just what was on the arrest sheet.

Q. Was he ever charged with a crime by the City of Selma?

A. Yes.

Q. When was that?

A. I made a warrant on Monday, the 16th.

Q. You made a warrant on Monday. What happened to that warrant?

A. It is in my files now.

Q. Was the charge ever entered on the docket of the City of Selma?

A. No.

Q. Is that the usual procedure?

A. Yes.

Q. The warrant is never entered on the docket?

A. We put them on the recorder's docket if they are going before the City Recorder.

Q. How do you tell they are going before the recorder?

A. When I bring him in the court room. If he demands a preliminary of some kind and I know he's going before the City Recorder, I put him on the city recorder's docket.

Q. Then the average fellow or average suspect you pick up comes into the city jail and demands a preliminary hearing, is that right?

A. Some demand it.

Q. Do they all demand it?

A. No.

Q. Do you advise them of their rights?

A. Yes, I do.

Q. For a preliminary hearing?

A. Yes.

Q. And you advised the defendant of this?

A. Yes.

Q. You, yourself, did it?

A. I am positive.

Q. Was anyone present when you told him he had a right to a preliminary hearing?

A. I don't know. I talked with Willie first alone, and I don't know—I don't believe anyone else was in there but just Willie and myself.

Q. Did you at any time—at any time—enter a specific charge against this defendant on the docket, the recorder's docket of the City of Selma?

A. No, not on the recorder's docket.

Q. Were you present in this court room on one day last week when Chief Mullen testified?

A. Yes, sir.

Q. Do you recall his testimony with reference to placing the information or warrant on the recorder's docket?

A. No, I don't recall.

Q. Is he in this room?

A. I don't see him.

The Court: He isn't in here.

Q. You don't recall?

A. No, I don't recall.

Q. Isn't it a fact that he said that every time a warrant [fol. 560] is issued the information on that warrant must go on the recorder's docket?

A. I don't believe that is a fact. I don't believe he testified to that.

Q. Captain Baker, in as much as you had reason to believe that this defendant would not require preliminary hearing of which the City Recorder would take cognizance, why is it that this defendant was never turned over to the County officials of Dallas County?

A. I don't know any other way to answer that, other than that he was not going before the City Recorder because that Court only meets on Tuesday of each week, and on Monday I made the warrant and we transported him to Kilby Prison.

Q. You transported him to Kilby Prison. The City of Selma took him to Kilby Prison?

A. That's right.

Q. And at that time no charge was pending in the City Court of the City of Selma?

A. I had a warrant. I had a warrant for him.

Q. But it was NOT on the docket, is that right?

A. If we don't put it on, no, it was not on the docket.

Q. So, that warrant was recorded, of course, and it was numbered?

A. No, it was not a numbered warrant.

Q. No number on that warrant?

A. No number on that warrant. I don't think so.

Q. Is that usual?

A. Quite frequently.

Q. You have warrants without numbers?

A. Yes.

Q. Were you present in this court room on the occasion that Chief Mullen testified?

A. I think so.

Q. Isn't it a fact that he testified that warrants are always numbered?

A. No, no, he did not testify to that.

Q. Are you certain of that?

A. I am positive of that.

Attorney Hall: We would like to have the testimony of Chief Mullen.

The Court: Not this afternoon. It will have to be transcribed. We will have it in the morning.

Attorney Hall: We would like to have that testimony transcribed.

Q. Now, Captain Baker, who took this defendant to Kilby Prison?

A. Sheriff McCain and Lt. Ware and myself.

Q. And who talked with him on the first day you went down?

A. Dr. Sowell—you mean in Kilby?

Q. Yes, sir.

A. Dr. Sowell from the State Toxicologist's Office, Lt. Ware and Sheriff McCain and myself.

Q. Was any charge then pending against him in the City [fol. 561] of Selma or Dallas County?

A. The warrant I have told you about. The warrant had been made.

Q. Did the warrant show execution at that time, sir?

A. I just don't know what you mean by showing execution.

Q. Did it indicate that it had been served?

A. Willie knew about it.

Q. Did the warrant show it had been served?

A. I just don't know.

Q. Had he been booked for any specific charge?

A. I had written on our arrest sheet, "Burglary in the first degree".

Q. What is an arrest sheet?

A. It is a sheet, a regular printed form, and used by the City of Selma Police Department for booking prisoners at the desk when they are brought in.

Q. Is there any way to show whether anything might be written on the arrest sheet?

A. Well, there were certain things written there at the time he was booked there at the office, the time and so forth, on the arrest sheet.

Q. On a separate sheet of paper?

A. That's right.

Q. What was on that separate sheet of paper could have been written at any time, couldn't it?

A. It was not, though. Just at the time he was booked.

Q. But it could be.

A. Oh, I guess it could be.

Solicitor Hare: We object to this. The question is the voluntariness of the statement. I can't see that the nature of this or of the warrant against him is in any way pertinent to the issue as to whether he made a statement and whether it was voluntarily made.

Attorney Hall: If your Honor please, our objection went to this man's arrest.

The Court: Over-rule the objection. Go ahead.

Q. Isn't it a fact, Captain, that that piece of paper is separate and disembodied?

A. Oh, yes, all of our rush sheets are prepared in pad form. I believe there is some kind of rubberish glue on one end to hold them together until used.

Q. Do you recall Chief Mullen's testimony with reference to arrest sheets?

A. I didn't listen to all of his testimony. I can't vouch for his testimony.

Q. Isn't it a fact that he testified that arrest sheets are made when men are first brought in, and if warrants are issued then whatever is on the warrant is copied on the recorder's record?

A. I just don't know what he said about that, but I know what I did in this particular case.

[fol. 562] Q. Do you recall hearing his testimony with reference to the recorder's docket of the City of Selma on some previous occasion in this cause?

A. I heard something about it, but I was in and out the Court room, and I just don't know what he testified.

Q. But you do know there is no reference to William Earl Fikes on the recorder's docket of this city.



A. No, I am sure it is not. I didn't put it on there. I made the warrant out.

Q. So, at the time you transported this man from Dallas County to Kilby Prison in Montgomery, there was no cause pending against the defendant in this city or in this county.

A. Oh, yes, I made a warrant out charging him with burglary in the first degree.

Q. That warrant had been served on this defendant?

A. Oh, yes. I made the warrant out personally and served it on him here in the jail, and he had been booked.

Q. He had been booked after arrest?

A. As much as we book anyone, on an arrest sheet.

Q. Captain, I believe you testified that you had talked to this man previous to taking him down to Kilby Prison. Is that right, sir?

A. Yes.

Q. And I assume, of course, that you talked with him with reference to the crime?

A. Yes.

Q. At that time, had he been charged with the commission of that crime?

A. When I first talked with him that day he had not been charged.

Q. Where was he then?

A. When?

Q. When you first talked with him.

A. In the city jail. Actually, in my office in the city building.

Q. He was in the custody of the City police?

A. Oh, yes.

Q. Did he have an attorney present?

A. No. No.

Q. Had his family come to see him at that time?

A. No.

Q. That was Monday, after he had been picked up by officers in Selma?

A. No, that was on Sunday when I first talked to him.

Q. And it was Monday when you took him to Montgomery to Kilby Prison?

A. That's right.

Q. I see, sir. Now, did you talk with Fikes after Monday?

A. Yes.

Q. Who was with you on that occasion?

A. Well, I talked with him on Wednesday of that week. I believe Sheriff McCain was the only one with me on that occasion. And Dr. Sowell met us at Kilby Prison.

Q. Now, I believe you testified previously that Sheriff McCain was with you on Monday, when you took him down there?

A. Yes.

Q. And that Sheriff McCain was with you Wednesday?

A. That's right.

Q. Who else was with you?

A. No one else on that Wednesday.

[fol. 563] Q. When did you next see this man?

A. On Thursday.

Q. Who was with you on that date?

A. I didn't understand the question.

Q. Who was with you on that date?

A. Lt. Ware from the Police Department of the City of Selma.

Q. Sheriff McCain wasn't with you at that time?

A. No.

Q. This defendant was still technically in the custody of the City of Selma?

A. I guess you could call it technically in the custody of the City of Selma. He was in Kilby Prison.

Q. They were holding him?

A. That's right.

Q. For the City of Selma—

A. That's right.

Q. Or for Dallas County?

A. You can call it either one. I don't know.

Q. Who were they holding him for?

A. On a charge of burglary.

Q. Who were they holding him for?

A. I just don't know. He was committed to Kilby Prison on an order or request or something of the Circuit Judge, Judge Callen.

Q. And just taken down there and held?

A. Yes.

Q. And so they were holding him for the Judge of the Circuit Court of Dallas County?

A. Could have been. I just don't know.

Q. But the City police took him there?

A. Sheriff McCain and Lt. Ware and myself carried him down to Kilby Prison.

Q. Were you present in this Court when the sheriff testified last week?

A. I don't think I was in here when all of his testimony was made.

Q. Didn't Sheriff McCain testify that he had never been in the custody of Dallas County officials until after his arraignment?

A. I don't know whether he did or not.

Q. On Thursday, when you testified that he made some statement into a recording machine, no one was with you except Lt. Ware?

A. That's right. He made some other recordings, but just Lt. Ware and myself were present on Thursday.

Q. Is that the recording you have been talking about all the time?

A. That's right.

Q. The one made on Thursday, May 21?

A. Yes, that's right.

Q. You haven't been talking about any others?

A. We have sometime today.

Q. Do you know whose machine that is, Captain (indicating recording machine previously testified about)?

A. It belongs to the City of Selma.

Q. Belongs to the Police Department of the City of Selma?

A. That's right.

[fol. 564] Q. And it was taken from here—

A. That's right.

Q. To Montgomery County—

A. That's right.

Q. By whom?

A. I carried it myself.

Q. And did you talk with this defendant later?

A. Later than when?

Q. After Thursday.

A. Oh, yes.

Q. When did you talk with him again?

A. Talked with him on Saturday of that week.

Q. Saturday of that week? And who was with you on that occasion?

A. Mr. James Hare, the Circuit Solicitor.

Q. And after Saturday, did you talk with him again?

A. Yes.

Q. When was that, sir?

A. On Tuesday of the following week.

Q. On Tuesday of the following week. That was the last time you talked with him—

A. Yes.

Q. While he was at Kilby Prison?

A. Yes.

Q. Now, Captain, so far as you know, no charge was ever lodged against this man?

Solicitor Hare: May it please the Court, that has been gone over and over. It is repetitious. He has asked him that question numerous times.

The Court: Captain Baker has testified he had a first degree burglary warrant.

Q. Do you have that warrant with you, Captain?

A. I have it around some place. It isn't on the stand with me.

Q. You don't know where it is?

A. I believe you have it. I turned it over to you, and I don't know what you done with it.

Q. Is there a record of that?

A. I had it. I had the warrant and turned it over to you, and you didn't return it to me.

Q. Is there anything at the City Hall about that warrant?

A. Just the arrest sheet. I turned the warrant over to you. I don't know what you done with it.

Attorney Hall: That's all. Your Honor, we submit that according to this witness' own testimony this defendant was being held illegally at whatever time the machine was used; and that whatever might be on that machine couldn't possibly be binding against him; and the State and cer-

tainly not the City of Selma nor Dallas County nor the State of Alabama, had any right to question him extra judicially at that time.

The Court: Over-rule.

Attorney Hall: We take an exception. There is just one [fol. 565] other question I would like to ask Captain Baker.

Q. Captain Baker, are you an electronic expert?

A. No.

Q. Are you familiar with recording machines?

A. I know how to turn it on and put the tape on and record it and play it back, but that's about all.

Q. You keep it in your possession at all times?

A. Oh, yes.

Q. Where?

A. In the locked vault at the city building.

Q. Nobody else has recourse to it?

A. Chief Mullen probably has access to it.

Q. Nobody has had access to it since the time you used it before?

A. No.

Q. You always keep it in your possession and you wind the tape?

A. I do myself, yes.

Q. And you are thoroughly familiar with that machine?

A. Oh, I know how to make it go, make it record and make it stop.

Attorney Hall: That's all.

Redirect Examination.

By Solicitor Hare:

Q. As to warrants, Mr. Baker, in the City Hall around there, I will ask you: if six persons were arrested for an affray, would arrest tickets be made on all six?

A. Oh, yes, sir.

Q. And if your investigation proved only three were involved, would you make warrants against the others?

A. No, sir.

Q. Would you put them on the docket?



A. No, sir.

Q. Now, I will ask you this: if a person was arrested for a bailable offense and he makes bond to the grand jury, would that necessarily go on the recorder's docket?

A. That is not necessary, no, sir.

Q. It would not. If he made a bond to the grand jury, it would not be for preliminary hearing?

A. No, sir.

Q. And did the defendant in this case ever request a preliminary?

A. No, sir.

Q. Now, you said you talked to him on Sunday. Did he request to talk to anybody at that time?

A. Yes, sir.

Q. Who did he request to talk to?

A. With Sheriff Townsend from Marion, Alabama, the Perry County sheriff.

Q. Did you call Mr. Townsend?

A. I did.

Q. Did he come over here?

A. He did.

[fol. 566] Q. Did he talk to the defendant?

A. He did.

Q. Did anyone else from Marion talk to him?

A. On Monday, his boss.

Q. Who was his boss?

A. Mr. Horne, the owner I guess and operator of the Pan-Am Service Station in Marion. He and his brother told me he was managing the Goodyear store in Marion.

Q. Yes, sir. Mr. Baker, at the time and at the place that you had a conversation with this defendant in Kilby Prison on Thursday, that you have heretofore testified to in the presence of Mr. Ware, was this defendant advised or told that his conversation was to be taken down on a recorder?

A. Yes, sir, he was.

Q. What did you do with that particular tape after you made that recording?

A. I placed it in the vault in the City Building.

Q. Has it been in your possession and in your custody?

A. Yes, sir.

Q. Since that time?

A. Yes, sir.

Q. And I will ask you if you have altered, re-arranged, added to or deleted, or in any manner whatsoever changed that tape from the time you made that recording up to the present time?

A. No, sir.

Q. And I will ask you if that tape is a true and correct transcription of what was said by everyone present there at that time?

A. Yes, sir.

Attorney Hall: We object.

The Court: Over-rule. The witness has answered.

Attorney Hall: We reserve an exception.

Solicitor Hare: Now, may it please the Court, the State offers in evidence the recording made at Kilby Prison on Thursday, the 21st. day of May.

Attorney Hall: We would like to cross-examine previous to that.

#### Cross Examination.

By Attorney Hall:

Q. Captain Baker, did you testify that the recording—that Chief Mullen might have had it between the time you had it?

A. He probably had access to it. I am sure he didn't bother it. He knows the combination of the vault.

Q. And it has been kept there at all times?

A. Yes, sir.

Q. And nobody else has the combination to the vault?

A. No.

Q. Has that same tape been on there (indicating recording machine) since that time?

A. No.

Q. Where has the tape been?

A. In the vault.

[fol. 567] Q. That tape has been taken off and put on?

A. Yes.

Q. And there were some other tapes on there sometimes?

A. Yes. I put that tape on there this morning.

Q. And it has always been in that vault?

A. Yes.

Q. You know that to be true?

A. I am sure. I am positive.

Q. You have not checked with Chief Mullen?

A. Yes, I have checked with Chief Mullen and he said he didn't take it out.

Q. Captain, on the occasion of your first talk with Fikes on the 17th. of May, that was Sunday? That was the 17th. of May?

A. I am sure that's right.

Q. Did you at that time have several other persons in the city jail down there whom you suspected of having committed some alleged burglaries?

A. Yes.

Q. And did you question them all?

A. Yes.

Q. And were they all taken down to Kilby Prison?

A. No.

Q. Were any of them taken, with the exception of this defendant?

A. No.

Q. Will you tell the Court why you took him?

A. Carried him down there for protection, protective custody.

Q. Protection from what, sir?

A. Oh, protection from 'most anything. It was out duty to see that nothing happened to him.

Q. Was anything threatening him at that time?

A. No, not that I know of.

Q. Any mob action or any threatened violence by mob action?

A. No.

Q. At any time, directed at this defendant?

A. No.

Q. Any threat to storm the jail and lynch him?

A. No.

Q. Had any of his fellow prisoners jumped on him?

A. No.

Q. Then why was he taken to Kilby Prison?

A. We had had so many incidents reported to us, and we thought it best to take him for protection to Kilby Prison.

Q. Had any overt acts been directed at this defendant?

A. No.

Q. He had been in your jail since Saturday night or early Sunday morning?

A. That's right.

Q. And he stayed there all Sunday and was there Monday morning?

A. That's right.

Q. And about what time Monday did you take him to Kilby?

A. About three o'clock in the afternoon.

Q. So he stayed there most of the day Monday?

A. That's right.

Q. When you took him to Kilby, were you armed?

A. Yes.

[fol. 568] Q. Were you heavily armed?

A. No, just side arms.

Q. Was Sheriff McCain?

A. He had his side arms.

Q. And you had nobody else in the car?

A. Lt. Ware.

Q. You and Sheriff McCain and Lt. Ware?

A. That's right.

Q. And you had no shot gun or machine gun?

A. No.

Q. If there had been any danger, sir—. Tell me, Captain, did you take him in an automobile belonging to the City of Selma?

A. Yes, City of Selma car.

Q. So that he was still in the custody of the City of Selma?

A. I guess so.

Q. And what you suspected him of was the commission of a felony?

A. That's right. That's right.

Q. And you had decided that he was not cognizable by the recorder's court?

Special Prosecutor Gayle: We object, it is not his duty to decide.

The Court: Sustain. That is out.

Q. You had not entered any charge on the recorder's docket?

A. No, I had not entered any charge on the recorder's docket.

Q. And you had not officially transferred him from the City of Selma to Dallas County?

A. No, we carried him to Kilby Prison.

Q. The City of Selma put him in its car and transporter him from Selma in Dallas County, Alabama, to Montgomery County, fifty miles away, and had him incarcerated in Kilby Prison, which is the State's prison?

A. That's right. That's right.

Q. Captain Baker, isn't it a fact that you took him down to Kilby Prison as a threat, to make him confess to some alleged crime?

A. No, we did not.

Q. Isn't it a fact, this was an act of intimidation?

A. No.

Q. Isn't it a fact that you told him, told this defendant, unless you got this defendant out of Selma he would be mobbed and lynched?

A. No, it is not.

Q. Isn't it a fact that you told him that the best thing he could do was to say he did these things and you would look out for him?

A. No. No. How could I look out for him?

Q. Isn't it a fact that you told him he would be better off without a lawyer?

A. No. I tell all of the defendants I talk with he could and should have counsel.

[fol. 569]      Redirect Examination.

By Solicitor Hare:

Q. Now, Mr. Baker, when you took this defendant to Kilby Prison, had he already made some statement to you?

A. Yes, sir.

Q. And was it your purpose to get more statements by taking him to Kilby?



A. No, sir.

Attorney Billingsley: We object. He is leading.

The Court: You opened the door.

Attorney Hall: We object to leading.

The Court: All right.

Q. And you say that he was admitted to Kilby on whose order?

A. On an order or letter by the Circuit Judge, Judge W. E. Callen.

Q. And that was Monday afternoon after he had been arrested at what time?

A. About 12:25 Sunday morning. That's when he was booked.

Q. What do you mean?

A. Twenty-five minutes after midnight. That's 0025 on Sunday.

Q. Yes, sir. Now, Mr. Baker, at any time that you talked to this defendant and at the time you made this particular recording, were you armed?

A. No, sir.

Q. Was anyone there in the chaplain's office at Kilby armed at that time?

A. No, sir, no one was armed.

Q. Are you permitted to go into Kilby with side arms or arms of any sort?

A. No, sir, you cannot enter the prison with arms of any kind.

Solicitor Hare: Now, may it please the Court, we now offer in evidence—

Attorney Hall: We have one other question, sir.

Solicitor Hare: All right.

### Recross Examination.

By Attorney Hall:

Q. Captain Baker, how long did you talk with this defendant when you first talked with him on Sunday, immediately after his apprehension?

A. From approximately ten a. m. until twelve noon.

Q. From ten a. m. until noon, two hours.

A. About two hours.

Q. That was continuous?

A. Oh, no, I was in and out of the office. Reports would come in, things I had to attend to, and phone calls.

Q. And he was sitting in your office?

A. Sure.

Q. And as you went in and out was he left sitting there or was he taken and locked up?

A. Oh, no, he was sitting in my office.

[fol. 570] Q. Did you lock him in?

A. No, we didn't lock him in.

Q. Just left him sitting in there?

A. Yes, sir.

Q. How long did you talk to him Sunday afternoon?

A. Oh, about two and a half or three hours on Sunday afternoon.

Q. That was continuous?

A. Not continuous. We had interruptions, and go get a drink of water, and come back.

Q. And for two and a half hours or three hours you questioned him on Sunday afternoon?

A. Altogether, yes. We rode him around in the car a little while and came back. Not continuous questioning.

Q. You rode him around in the car a little while?

A. Yes.

Q. On Monday, sir, when you talked with him—you took him down to Kilby on Monday afternoon?

A. Monday afternoon.

Q. Did you talk with him Monday morning?

A. Yes.

Q. How long, sir?

A. About an hour and a half or two hours.

Q. Do you remember what time you started talking to him on Monday?

A. Around nine o'clock in the morning.

Q. And you talked with him until what time?

A. About eleven.

Q. After that, sir, did you talk with him again before you took him down to Kilby?

A. No, I didn't see him again until we were ready to go to Kilby.

Q. I see. Now, sir, you didn't talk with him Monday afternoon?

A. Oh, we had a general conversation. I don't know what it was about, I couldn't tell you. And riding over there I was on the back seat with him.

Q. Do you recall testifying previously with reference to your conversation with this defendant on Monday afternoon, sir?

A. I testified several times previously.

Q. And are you certain that you didn't talk with him on Monday afternoon?

A. We carried him to Kilby Prison, and after we arrived at Kilby we talked with him.

Q. Monday afternoon you talked with him?

A. Yes.

Q. How long, sir?

A. I expect we talked with him several hours.

Q. Did you talk with him Monday night at Kilby?

A. Yes, a little while after supper. I just don't know how long.

Q. Did this defendant request this conversation?

A. No, I don't guess he requested it.

Q. So you talked with him several hours Monday afternoon, and Monday night you talked with him at Kilby?

A. Yes.

Q. How late did you talk with him Monday?

A. I don't remember how long. We came back to Selma that night. I don't think it was over several [fol. 571] hours that evening.

Q. Now, when did you say you saw him next, sir?

A. On a Wednesday.

Q. And you talked with him on Wednesday?

A. That's right.

Q. Did you talk with him Wednesday morning, sir?

A. No, I think we didn't get over there that day until afternoon—I believe we did talk with him a little while before noon.

Q. About how long that afternoon?

A. That afternoon we had several hours conversation

with him. I just don't remember what time we stopped that evening. Wasn't too late.

Q. Was Willie doing most of the talking?

A. He was doing quite a bit of it.

Q. He is a talkative man, you would say?

A. No. He was responsive to our questions.

Q. Was he talking spontaneously or in answer to questions?

A. Very responsive to the questions we asked him.

Q. Only when he was asked?

A. That's right.

Q. So that unless he is questioned he doesn't talk, or he didn't?

A. I don't know.

Q. During the time you talked to him.

A. Oh. Yes, he would volunteer some, a good bit of information to us.

Q. But, sir, by and large, he answered questions?

A. He would answer our questions.

Q. But he did talk only when questioned?

A. The only times I talked with him was when we were questioning him.

Q. So that during these several hours you mentioned, you were questioning him?

A. Sure, yes.

Q. Does that mean that you and Sheriff McCain and Lt. Ware and Mr. Hare and Mr. Reese were questioning him, all of you, not just one?

A. Oh, no. I did most of the talking with Willie. And Mr. Hare did some on Saturday, and Mr. Reese asked him on the following Tuesday.

Q. Did the sheriff ask him any?

A. Sure.

Q. And I believe you testified that Dr. Sowell was there?

A. That's right.

Q. And who is he, sir?

A. He is a toxicologist from the State Department of Toxicology, State of Alabama.

Q. And he was present at the questioning?

A. Yes.

Q. And did he direct questions to this defendant?

A. Oh, yes.

Q. And I believe you testified that sometime the warden or assistant warden was present?

A. Mr. Burford was present at one time, but I don't [fol. 572] know that he actually asked him a question. Mr. Burford was warden at that time of Kilby.

Q. At that time, do you know whether or no there was any charge pending against this defendant—at the time Mr. Burford questioned him?

A. Yes.

Q. Where was that pending?

A. Over here in Selma.

Special Prosecutor Gayle: That has been gone over and over. We object on the grounds that it is repetitious.

The Court: Yes, sir, it is repetitious. Sustain.

Attorney Hall: We take an exception.

The Court: All right, you have an exception.

Q. Mr. Burford, you say, was present at the questioning?

A. Yes.

Q. Now, who advised Willie of his right to have counsel?

A. I did each time.

Q. In the presence of these other witnesses?

A. I don't know whether they were present or not. I would usually start off the conversation each time, and I'm sure some of the witnesses heard me advise the defendant that he was entitled to counsel and his various rights.

Q. And after Wednesday, did you talk with this defendant again?

A. Yes, after Wednesday, I talked with him on Thursday, May 21, 1953.

Q. How long did you talk with him at that time?

A. First conversation that evening was a couple of hours.

Q. You didn't talk with him at all in the morning?

A. That was in the afternoon. We didn't talk with him in the morning.

Q. You say the first conversation was two hours?

A. Around two hours.

Q. And the second conversation, sir?



A. Well, I imagine about an hour or an hour and a half, something like that.

Q. And did you talk with him again that afternoon or evening?

A. No, not after that second set-to.

Q. Did you talk with him on another occasion?

A. Yes.

Q. What time was that?

A. That was on Saturday.

Q. How long did you talk with him that time, sir?

A. About three hours—about three and a half hours that Saturday afternoon.

Q. How about that Saturday morning?

A. We saw Willie a little while that Saturday morning.

Q. How long?

A. I guess fifteen or twenty minutes.

Q. But your main conversation was in the afternoon?

A. Yes, after lunch.

Q. And you were still questioning him?

A. Yes.

[fol. 573] Q. And each time you talked with him, you were questioning him?

A. Oh, yes. Yes.

Q. And I believe the last time you saw him was the following Tuesday? You didn't see him that Sunday?

A. No, I didn't go to see him on Sunday.

Q. Or that Monday?

A. No.

Q. And you saw him, sir, the following Tuesday?

A. The following Tuesday we went over.

Q. How long did you talk with him that Tuesday?

A. Not too long, just a very short while.

Q. About how long?

A. About an hour at the most.

Q. That was in the morning or afternoon?

A. That was in the afternoon, after lunch.

Q. Sir, isn't it a fact that from the very first day that man was picked up by the police of the City of Selma until Tuesday, one week later—a week and two days—he was constantly questioned by yourself and other officials of the City of Selma and Dallas County?

A. No, sir.

Q. Isn't it a fact that questions were propounded and you told him over and over and over again that he committed several alleged burglaries?

A. No. Most of the time he was very responsive to the questions.

Q. Isn't it a fact that you put him in your car and took him from place to place where these alleged burglaries occurred and pointed them out to him, and told him the names of the people who accused him?

A. No, sir. I took him in the car with Sheriff Townsend from his home county and Chief Mullen. Put the defendant in the car, and we left the City Building to go see his uncle, who, he stated lived in Selma; and after we got there, where he said his uncle lived, he remembered that five years prior his uncle had moved to Perry County. And after that we we went to Mabry Street—no, not on Mabry, but on McLeod, to where—

Attorney Hall: We object to any voluntary testimony.

The Court: You asked him if he didn't take him. Over-rule.

Attorney Hall: We except, your Honor.

The Witness: (Continuing his answer) We carried him to where he left his car, and we rode him by three of the houses that had been burglarized. And we did not tell him who lived there or how the entry was made. And some of them I didn't know. And asked him if he had been around that place before, and one of the houses he said he had been and another at that time he said he hadn't.

[fol. 574] Attorney Hall: If your Honor please, we are going to again object to the testimony of this particular witness, on the grounds that it is voluntary and uncalled for.

The Court: The answer made by the witness is responsive to the question asked by Counsel for the defendant, and the objection is over-ruled and you have an exception.

Attorney Hall: We reserve an exception, sir.

Q. Captain, you say that you yourself did not know the locality of those houses?

A. I said I knew the location. I said that I didn't show him how the entries were made, because at one of the houses I didn't know until after the defendant told me.

Attorney Hall: Your Honor, please, we move that the last answer given by the witness be stricken from the record as being voluntary and as being or purporting to be in the nature of a confession.

The Court: Your motion is granted; and Gentlemen of the Jury, the last part of the testimony by Captain Baker is out and not for your consideration.

Attorney Hall: And we further move the Court, that it was an improper remark made in the presence of this jury, and that at this time the Court declare a mis-trial.

The Court: Your motion is denied. The Court again charges the jury that the last remark of Captain Baker is out and not for your consideration in the determination of this case.

Attorney Hall: We except to the ruling of the Court.

The Court: You have an exception. Anything further?

Q. Captain, it was on Monday afternoon when you were riding him around?

A. Oh, no, on Sunday.

Q. That was the day after his arrest?

A. The day of his arrest.

Q. Same day. I see, sir. What time did you get him back to the City jail?

A. We were gone about twenty minutes, I imagine. It was about the middle of the afternoon.

Q. Who was with you at that time?

A. Chief Mullen and Mr. Townsend, sheriff of Perry County.

Q. Chief Mullen and yourself and the sheriff of Perry County, and who else?

A. The defendant and myself.

Attorney Hall: I see. That is all.

Solicitor Hare: We will let Mr. Baker stand aside, and we want to call Chief Mullen.

[fol. 575] ED W. MULLEN, being duly sworn, testified as follows:

Direct Examination.

By Solicitor Hare.

Q. What is your name?

A. E. W. Mullen.

Q. Where do you live?

A. Selma, Alabama.

Q. Mr. Mullen, what do you do?

A. Chief of Police.

Q. Is that of the City of Selma, Dallas County, Alabama?

A. Yes.

Q. How long have you been Chief of Police?

A. Eight years.

Q. Mr. Mullen, do you know of any tape recording made by Captain Baker?

A. Yes, sir.

Q. Do you know of any tape recordings made by him with respect to this defendant, William Earl Fikes?

A. Yes, sir.

Q. Do you know where those recordings have been kept?

A. Yes, sir. In the vault in my office.

Q. In the vault in your office. Who has a key, or what kind of security do you have?

A. It has a combination on it.

Q. And who has access to that vault?

A. I have access to it and Captain Baker has access to it.

Q. Are you the only two people who have access to it?

A. Yes, sir.

Q. And as far as you know, are you the only two people who know the combination to that vault?

A. Yes, sir.

Q. Mr. Mullen, have you at any time altered, deleted, spliced or done anything with reference to the tape recordings that were in that vault?

A. No, sir.

Q. Have you made any alteration or any sort with respect to them?

A. No, sir.

Q. And I will ask you if so far as you know they are in substantially the same condition now as they were when they were put in there?

A. So far as I know, they are. Yes, sir.

### Cross Examination.

By Attorney Hall:

Q. What else is kept in that vault, sir?

A. Well, practically everything that we pick up from people: contraband stuff, pistols and whiskey, and stuff like that.

Q. So that is more or less the evidence vault?

A. That's right.

Q. And you put everything in there that you take for evidence?

A. That's right.

Q. In the course of each day, you yourself have occasion [fol. 576] to go in and out of that vault—that place?

A. I do.

Q. No one else takes out but you?

A. The captain and I.

Q. Just the captain and yourself?

A. That's all.

Q. Is that in the day and night time?

A. All the time.

Q. Do you mark the things for identification previous to putting them in the vault?

A. I mark the things that I put in, yes.

Q. Does Captain Baker mark the things he puts in there, so he can identify them?

A. I don't know whether he marks everything he puts in there or not.

Q. You don't know for sure whether or not he does that?

A. Not in every case, no.

Q. Now, you invariably mark everything you put in that particular vault?

A. I do.

Q. And show exactly what it is. Is that right, sir?

A. That's right.



Q. And nobody else has access at any time, is that right, sir?

A. Nobody except the captain and I.

Q. I ask you, sir; how many tape recordings were in that vault during the last month or so?

A. I don't know.

Q. Were there more than one? Or two?

A. I don't know.

Q. Might there have been several, sir?

A. Yes.

Q. Might there have been as many as six, sir?

A. I don't know. I don't think so.

Q. Would you know whether or not there was any distinguishing mark on them, sir?

A. No, I don't.

Q. So you don't know which one was which, do you, sir?

A. No, I don't know.

Q. So the tape recording on this record player here might be any one of several, so far as you know. Is that right, sir?

A. As far as I know, yes.

Q. Now, Chief Mullen, what is the procedure on arrest in the City of Selma, sir?

A. What do you mean?

Q. What is the procedure for arresting in the City of Selma? How is a man arrested when he is brought in to your jail? What is the procedure in arresting and booking?

Special Prosecutor Gayle: We object to that. We have brought nothing out from Chief Mullen on that.

Attorney Hall: This is cross-examination, and we have a perfect right to ask anything relative to the admission of [fol. 577] this defendant.

The Court: Over-rule.

Q. Will you answer, please, sir?

A. A person is brought in to our desk, where a desk clerk is on duty, and we have what we term an arrest sheet.

Q. Yes, sir.

A. The prisoner is asked his name, his age, and several other questions, and that is placed on this arrest sheet, and

that sheet is filed in the drawer there until a warrant is made.

Q. Yes, sir.

A. And then the prisoner is searched and his valuables taken off of him, and they are listed on this arrest sheet, and then he is placed in jail.

Q. All right, sir. You say "until a warrant is made". What happens after the warrant is made?

A. When the warrant is made, that is placed on the docket—on the recorder's docket, if it is to come before the recorder.

Q. I see. Who has custody of the recorder's docket, sir?

A. The desk clerk.

Q. Who transfers the information from the warrant to the recorder's docket?

A. The desk clerk.

Q. Who decides whether the matter will come before the recorder?

A. Well, I decide in some instances, and the captain decides in some instances.

Q. I see, sir. So you or the captain decide whether or no it goes before the recorder's Court.

A. That's right.

Q. Chief Mullen, did you testify in this cause previously, sir?

A. No, I did not. You mean in this case?

Q. Yes, sir.

A. No, I did not. I did in the previous case.

Q. On the motions in this cause?

A. You mean on the motions in this cause?

Q. Yes, sir.

A. Yes.

Q. On the motions in this particular cause.

A. Yes.

Q. Do you recall your testimony with reference to the arrest procedure, sir?

A. I think I do.

Q. Do you recall stating that in every case where a warrant was made, the information on the warrant was transferred to the recorder's docket, sir?

A. Yes, that's right.

Q. And that is true in every case where a warrant is made?

A. In every case where a numbered warrant is made.

Q. Do you recall testifying that all warrants issued by the [fol. 578] City of Selma are numbered, sir?

A. No. They are not all numbered.

Q. Do you recall testifying to that fact, sir?

A. No, I don't think I did. I don't think I did.

Q. On what occasion do you issue an un-numbered warrant, sir?

A. An un-numbered warrant is issued when we have an out of town prisoner or send a warrant out of town.

Q. So that the only way you use or issue an un-numbered warrant is when you have an out of town person in custody. Do you mean you are holding a person for someone out of town or that you are going to issue a warrant for some person out of town? What do you mean?

A. I mean someone is out of town.

Q. And you issue a warrant for his apprehension?

A. That's right.

Q. I see. What is the other circumstance?

A. That is virtually the only circumstance.

Q. When the person is not out of your custody and you are issuing a warrant for his apprehension and you are going to send the warrant to some other official?

A. That's right.

Q. But when a person is in your custody and you issue a warrant for his arrest, are the warrants usually numbered?

A. Usually they are. Sometimes they are not.

Q. What are the circumstances when they are not?

A. Well, I am not just particularly clear on just why they are not.

Q. Why are they numbered, sir?

A. They are numbered in order that we might keep up with them.

Q. If they are not numbered you can't keep up with them, can you?

A. Yes, but they would not be on the docket without a number on them.

Q. If they are not on the docket with a number on them,

do you have any other record of the fact that a warrant has been issued?

A. We have the arrest sheet and then we have a copy of the warrant.

Q. You make a copy of the warrant, sir?

A. No, the warrant.

Q. You have the warrant itself.

A. Yes, that's right.

Q. You have the warrant itself, and does that show a return?

A. Yes.

Q. And it shows what has been done with the prisoner?

A. Ordinarily, yes.

Q. Is there ever a time when it doesn't sir?

A. I don't know. I don't think there is.

Q. Chief Mullen, are you or Captain Baker always on duty, one or the other of you?

A. No, we are not on duty twenty-four hours a day. We are on call twenty-four hours a day.

[fol. 579] Q. I see: How do you usually work, you and the captain? Do you work the same hours?

A. Yeah, we work the same hours in the day time.

Q. And is your day an ordinary eight hour day?

A. No, sometimes our day is sixteen hours and sometimes eight or ten hours, and sometimes it is twenty.

Q. I see. Now, when the desk clerk takes things from a prisoner to keep, whatever they may be, and which might go into your vault, what does he do with them if you and Captain Baker are not there?

A. They lock it up and keep it until we get there.

Q. And in the event they need something in your vault and you aren't there, what do they do then?

A. They call us up, and we come down there.

Q. So there is no provision at all for anybody to get in that vault if you and the captain are not there.

A. That's right.

Attorney Hall: That is all.

# Redirect Examination.

By Solicitor Hare:

Q. Chief, would it be a matter left to your discretion if you use a numbered or un-numbered warrant?

A. Not particularly mine. The Captain could do so too.

Q. It would be a matter of your discretion or Captain Baker's, what type warrant you use?

A. Yes, sir.

Q. And do you use un-numbered warrants?

A. Yes, sir.

Q. They are not exceptional?

A. No, sir.

Q. Chief, if a person makes a grand jury bond, is arrested and makes bond to the grand jury, would that go on the City recorder's docket?

A. No.

Q. That case would not be heard by the recorder?

A. No, sir.

Q. And would not be within his jurisdiction?

A. No, not if it goes to the grand jury.

Q. If a preliminary was requested by a defendant, would it go on the recorder's docket?

A. Yes, sir.

Q. Did you ever talk to William Earl Fikes while he was in the custody of the City of Selma?

A. I talked to him possibly five minutes in the office.

Q. At any time that you talked with him, did he request a preliminary?

A. No, sir.

Solicitor Hare: I believe that's all.

[fol. 580] Cross Examination.

By Attorney Hall:

Q. Did William Earl Fikes make a grand jury bond?

A. I think he did.

Q. Was he released?

A. No, I don't think he was released.

Q. As a matter of fact, can a person make a bond before he is charged?



A. I wouldn't know that.

Q. Chief Mullen, is murder aailable offense?

A. As far as I know it isn't.

Q. Do you recall examining the recorder's docket in this Court previously in this cause?

A. I do.

Q. Do you recall seeing listed there the name of a defendant charged with murder who waived to the grand jury?

A. You mean of one particular person?

Q. Yes, sir, of one particular person.

A. Yes.

Q. You remember seeing that?

A. Yes, I do.

Q. And that was in the recorder's docket?

A. Yes.

Q. And as to the disposition, it says, "Waived to the grand jury"?

A. That's right.

Q. In that case no grand jury bond was made?

A. No, there wasn't any bond made.

#### Redirect Examination.

By Solicitor Hare:

Q. If they waive to the grand jury, does that necessarily mean they are subject to bond orailable?

A. No, sir.

Q. Are capital offenses in Alabama necessarilyailable?

A. As far as I know, they are not.

#### Recross Examination.

By Attorney Hall:

Q. Chief Mullen, who ordinarily sets bond for defendants?

A. The recorder sets bond.

Q. Does he set the bond without a preliminary hearing?

A. No, I don't think so. I know he doesn't.

Q. In order to have a preliminary hearing, wouldn't the name of the defendant have to be on the recorder's docket?

A. Yes.

[fol. 581] Q. So that in order for a defendant to obtain bond for the grand jury, he would have to have a preliminary hearing in the recorder's court, would he not?

A. He would have to have it or waive.

Q. And if he waived, the recorder's docket would show that, wouldn't it?

A. Yes.

Q. And if a defendant had made bond, had made bond for consideration by the grand jury and waived his preliminary hearing, that fact would still appear in the recorder's docket, would it not, sir?

A. Yes.

Q. As a matter of fact, sir, is it not a fact that in no circumstance where a man is accused of a felony, can he get bond without first having a preliminary hearing in the recorder's court of the City of Selma?

A. I don't know about that. If he is tried in our Court, if he has a preliminary hearing, the Judge will set a bond if he is bondable.

Q. In no circumstances, where a man is arrested by the police of the City of Selma and charged with a felony, can he get by without having a preliminary hearing in the recorder's court of the City of Selma, is that true, sir?

A. Yes, on some felonies he can get a bond.

Q. What are they, sir? And who would set them, sir?

A. Well, assault with intent to murder—and grand larceny.

Q. Grand larceny, sir? That is true in the City of Selma?

A. That is right.

Q. Who would set that bond?

A. Either I or the captain.

Q. In grand larceny and assault with intent to murder?

A. Yes.

Attorney Hall: That's all, sir.

Solicitor Hare: You can come down.

J. WILSON BAKER, recalled to the stand, testified further as follows:

**Direct Examination.**

**By Solicitor Hare:**

Q. You are Mr. J. Wilson Baker of the Police Department?

A. Yes.

Q. And you have previously testified in this cause today?

A. Yes.

Q. And you testified with reference to a tape recording that you made?

A. Yes, sir.

Q. Mr. Baker, I will ask you if that particular recording that you have heretofore testified to, if you have recently played that recording back?

A. I have.

Attorney Hall: If the Court please, we object to that.  
[fol. 582] The Court: Sustain the objection.

Solicitor Hare: I am just trying to show that it is the same. Preliminary questions.

The Court: Sustain the objection to the question.

Q. Are you familiar with that recording that is on the machine there, and which you have previously testified to?

A. I am.

Q. I will ask you if it is a true and correct transcription of what was recorded on that occasion?

A. It is. Yes, it is.

Q. And that you have heretofore testified about?

A. Yes, it is.

Q. And that particular recording on this machine was made by you?

A. Yes, sir.

Q. And in your presence?

A. Yes, sir.

Q. And it has been in your custody since the time that it was made?

A. Yes, sir.

Q. It has not been altered, deleted, spliced or changed?

A. No, sir.

Solicitor Hare: May it please the Court, the State at this time now offers the recording in evidence.

Attorney Hall: If the Court please, we want to cross-examine.

The Court: Go ahead, and let's conclude it now.

Attorney —: Your Honor, please, we don't want to delay the hearing, but the State insists on bringing out new testimony and we have a right to cross.

The Court: Go ahead.

### Cross Examination.

By Attorney Hall:

Q. Captain, how many tape recordings—we withdraw that. Where was this tape recording for the last month, sir?

A. In the vault in the City Building of the City of Selma.

Q. I ask you, Captain, were you in the Court room during Chief Mullen's testimony?

A. On part of it. Not very much of it.

Q. You heard part of it, did you?

A. Yes.

Q. You were out of the court room most of the time?

A. I was back in the lawyer's room smoking.

Q. You heard some of it?

A. Yes, but just a very little of it, because I was in the lawyer's room smoking.

Q. Captain, you say this recording was in the vault of [fol. 583] the police department of the City of Selma?

A. That's right.

Q. How many tape recordings are in there, sir?

A. I don't know of but one.

Q. That is the only one that you know of?

A. That's the only one I know of.

Q. No other recordings are in that vault?

A. No others. None.

Q. None that you made yourself?

A. Oh! Recordings? It was two or three tapes.

Q. Two or three different tapes?

A. Yes.

Q. Are they on spools?

A. On these plastic spools.

Q. Several tapes?

A. Yes, sir.

Q. And each constituted a separate recording?

A. That's right.

Q. Were these tapes marked for identification purposes?

A. Yes.

Q. How were they marked?

A. I have them in a little blue paste-board box with a little paste-board card, and each one identifies what portion of the conversation I had with the defendant is on that reel.

Q. I see, sir. Now, do you have those little blue boxes in this court room, sir?

A. No, I don't.

Q. That is the only way you can identify one recording as against another?

A. That's right.

Attorney Hall: That's all.

### Redirect Examination.

By Solicitor Hare:

Q. Mr. Baker, can you identify a recording by putting it on the machine and playing it?

A. Yes, sir.

Q. And I will ask you if the recording you have on the machine now is the recording which you made on the occasion you have heretofore testified about?

A. Yes, sir, it is.

### Recross Examination.

By Attorney Hall:

Q. Captain Baker, how do you mean you can identify a recording if it is put on the machine and played, sir? Do you have a special way of making a recording?

A. Oh, I know the conversation that I had.



Q. Is it possible that somebody might have made an identical recording and left out one word or some words or included some words?

[fol. 584]. A. Not with my voice.

Q. Is it possible that somebody might have imitated your voice?

A. No, I don't believe so.

Q. The only way you can identify this recording, sir, at this time, and the difference between it and some other recordings is by those little blue containers?

A. I personally took it out of the little blue container and I personally put it on this particular machine.

Q. You don't have any of those little blue containers in the court room at this time?

A. No, I don't.

Attorney Hall: That's all, sir.

Solicitor Hare: The State offers in evidence the recording heretofore testified to by the witness presently on the stand.

Attorney Hall: If the Court please, the defendant objects to what purports to be a recording made by this witness, on the ground that sufficient predicate has not been laid.

The Court: Over-rule the objection.

Attorney Hall: We except, sir, and we would like to make another motion. We would like to make an offer to put this defendant on the stand for the purpose of refuting certain allegations by the State with reference to the voluntary nature of what purports to be certain extra judicial admissions, and for no other purpose.

Solicitor Hare: Now, may it please the Court, if the defendant takes the stand, I insist that he be subject to cross-examination on any and every item that is in evidence. I am not willing to make any agreement of limitation.

The Court: And you are only offering the testimony of the defendant for the purpose of refuting the voluntary nature of this recording?

Attorney Hall: Just that, sir.

The Court: I sustain the State. If the State is not willing to reach a stipulation or agreement on that, but insists that you open defendant for cross-examination of any and every nature, I over-rule the motion.

Solicitor Hare: I ask Mr. Baker to play the recording.

The Court: The reporter is to take down verbatim the words which come from the recording which Captain Baker is about to play.

[fol. 585] Attorney Hall: Before the recording is played, the defendant would like to object again on the grounds that this recording has not been sufficiently identified, it has not been sufficiently shown where this recording has been kept, and it has not been sufficiently shown that there was no chance for substitution, and it has not been sufficiently shown that the person or persons who allegedly made this recording were proficient and sufficient at the operation of this machine, nor has it been shown that they are experts to a necessary proficiency to attest to the correctness of what purports to be a recording of an alleged confession; further, it was been conclusively shown here that there were several recording- or tapes or spools of tape kept in what purports to be the vault of the City Police of Selma at the same time, and that this recording has not been shown to be different from any other recording made at some subsequent time or at some previous time. For all of these reasons, sir, we object to the admission of this into evidence.

The Court: Your objection and your motion—I presume you are combining them?

Attorney Hall: Yes, sir.

The Court: Your objection and your motion are both denied.

Attorney Hall: We reserve an exception.

The Court: You have an exception.

(The above referred to recording is accepted in evidence as State's Exhibit 3; and the witness, Captain J. Wilson Baker, goes to the recording machine and plays same to the Court and Jury.)

## STATE'S EXHIBIT 3

## Recording of Conversation Between Captain J. Wilson

Baker and the Defendant, William Earl Fikes

What is your name? William Fikes.

What is your name? William Fikes.

How old are you, Willie? Twenty-seven.

How old? Twenty-seven.

Speak your name and age one more time. Twenty-seven, William Fikes.

What's the day of the month, Willie? May the twenty—twenty-first, May the twenty-first.

[fol. 586] What year? 1953.

Do you know who is talking to you in here today? Yes, sir.

Who? Captain—Captain Ware and er—Captain—er—

Who, Willie? Captain Ware and Captain Baker—er—

Captain Baker? Captain Baker.

Where are we from? Selma, Alabama.

Where do we work? Do you know? Police department.

Willie, we've only been talking to you about a couple of hours now, haven't we? Yes, sir.

During this time has anybody cursed you or abused you, beat on you, threatened to beat you or anything, threatened you in any way? No, sir.

To try to get you to tell us the truth? No, sir.

Now, William, what we want to do right now is to review everything that we've been over so far, and I want you to tell us the honest to God's truth about everything that you've done so far, you hear? Yes, sir.

Everything that you've told us so far about these things, breaking in these houses. Have you been breaking into any of the houses in Selma? All that I told you about, I have.

The ones that you have already told us about? Yes, sir.

Well, now, the first you went into in Selma you say now is on a Friday night about a month ago? Yes, sir, maybe a little longer than that.

William, do you remember the date? No, sir, I don't exactly remember the date.

Well, now, William, that house you went into was on a Friday night? Yes, sir.

Was it raining that night? Yes, sir, it was drizzling.

Drizzling or raining pretty hard, which was it? It was just drizzling.

Just drizzling? Yes, sir.

Drizzling enough to get you good and wet, wasn't it? Yes, sir.

No, how did you get in that house, William? Er—I went around to the side window and took a piece of wire and opened the screen and come through that.

And what kind of room were you in then? I was in a—er—

What kind of room was it, William, do you remember? I was in a ki—

In a bedroom with a child? Bedroom?

Who was in that bedroom, William? Baby.

Did you bother that baby in any way? No, sir.

Did you put your hand on her? No, sir.

[fol. 587] You walked on around then to, what room? Bedroom.

Did you go from that room to another bedroom or did you go from that room to some other kind of room in the house? Went to the bedroom.

You went to the bedroom before you went in the kitchen? No, sir, I went in the kitchen first.

What did you do in the kitchen? Got a knife.

Before you went to get the knife, did you do anything else in there? No, sir.

Did you unlock a door there in the kitchen? Yes, sir, I unlocked the door.

What kind of latch was on the door, do you remember? A chain latch.

A chain latch? One with a bolt that hangs on the end of a chain, bolt that slides through and hangs on the end of a chain, is that right? Yes, sir.

And you picked up a knife in there? Yes, sir.

Where was the knife? It was laying on the kitchen cabinet or table or something.

How long a knife was it? It was about five inches long.



It couldn't have been no longer than that? Yes, sir, it could have been longer.

What kind of knife was it? It was a butcher knife.

It was a butcher knife? Yes, sir.

All right. After you got this knife, where did you go? Went on up in the bedroom.

Went down the hall into the bedroom, or what? Yes, sir, went up—

Went up to the end of the hall into a bedroom? Yes, sir.

What did you do in there, William? A lady was in there in the bed.

Was a little baby in there in that room with her? Yes, sir.

Was the baby in the bed with her? No, sir.

The baby was in a little thing close to the bed? Yes, sir.

What did you do on that bed with that lady? I started to get on the bed and she woke up and she grabbed me and tussled and stumbled around in there and fell over a stool in the living room, and—

And you stumbled out of the bedroom and got down into the living room? Yes, sir.

And you fell over a stool? Yes, sir.

Go ahead and tell me now what happened after you fell over the stool, go ahead. Fell over the stool. Fell over the stool and fell down in the floor and she tussled the knife out of my hand and got at me and I ran out of [fol. 588] there.

After you fell over the stool and got down on the floor, what did you say to this lady? I told her to open her legs out, I wanted a little.

Told her to open up her legs, you wanted a little? Yes, sir.

And she took the knife and you got up and ran out of the door? Yes, sir.

Now, William, why did you go in this house? I don't know, sir, Captain, just a urge or something. I don't know.

What kind of urge, William? Just tell in your own words what kind of urge you think it was. I don't have any idea, but just—

What were you looking for in there? I was looking for some place to have an intercourse.



Looking for some place to have an intercourse, and you knew white folks lived there, didn't you? Yes, sir.

And you were trying to have an intercourse with a white lady, is that right? Yes, sir.

And after you ran out of the house, where did you go? I went on and got in the truck and went on back to Marion.

You went on back to Marion? Yes, sir.

Now, where was your truck parked while you were in the house with this white lady? Parked down there by the—the first come up in town down there back of that ice house down there.

You parked down there each time you come in town? Yes, sir.

And at the ice house down close to where? To the Buckeye Oil Mill.

Close to the Buckeye Oil Mill? Yes, sir.

Now, William, the night you came in here, did you come in here by yourself? That night you're talking about you went in the house with the white lady with two children in the house, now, one in one room and the baby in the room with the white lady, who came over to Selma with you that night? Didn't no one come.

About what time of night was it when you went in there? It was about ten o'clock or somewhere around there.

About ten or somewhere around there? Yes, sir.

This piece of wire you said, where did you get that piece of wire that you used on that screen? I wrung off a little piece around the house there, a little piece of wire hung up around there.

You found a piece of wire around behind the house there? Yes, sir.

And you wrung it off? Yes, sir.

And you threw the other big piece down and just kept [fol. 589] that little piece? Yes, sir.

Now, where was it? Just laying on the ground when you found it? No, sir, it was up.

Up? Up on what? Kind of clothes line.

Up on a piece of clothes line? Yes, sir.

And you just threw the other piece down on the ground

when you got through with it, or did you leave it hanging somewhere? I just left it hanging.

You just left it hanging? Yes, sir.

William you went in that house looking for a white lady that you could have an intercourse with then, didn't you? Yes, sir.

Now, William—Yes, sir?

The night that you were in that house that you were just telling me about, now, where you got a butcher knife out of the kitchen and went back in the bedroom and tried to start to get up on the bed with this white lady, and she started scuffling with you, do you know how she was dressed that night? She had on pajamas.

Had on pajamas? Yes, sir.

And you tried to pull her pajamas off? No, sir.

You didn't get around to that? No, sir.

That is what you went in there to try to do, wasn't it? Yes, sir.

And she fought you off? Yes, sir.

And you went on back to Marion? Yes, sir.

And your name is William Fikes? Yes, sir.

And you are 27 years old? Yes, sir.

And you live in Marion, Alabama? Yes, sir.

All right, William. You know that you have been, or we have been recording this as we talked to you, don't you? Yes, sir.

And you know that you are talking into a microphone that's making a record of everything we say, don't you, William? Yes, sir.

And you know that you are making this statement voluntarily, and we haven't forced you or whipped you or threatened you or nothing else and told you what would happen to you about these things, have we, William? No, sir.

And that is the truth, isn't it, William? Yes, sir.

All right, William.

(End of State's Exhibit 3.)

Attorney Hall: If your Honor please, we would like for [fol. 590] the record to show that only a portion of this recording was played, and that previous to the identifica-

tion of the person who allegedly made those admissions the recording came to a complete stop. We don't know if the record shows that or not. Perhaps the recording came to a complete stop and it was started again. We would like for the record to show also, sir, the various noises that sounded on the recording. For instance, there were some sniffs and sniffings, and slaps and slammings. Perhaps the witness can clear those up, but we want the record to show what is on the recording.

### Redirect Examination:

By Solicitor Hare:

Q. Mr. Baker, the recording that you just played there, was that a true and correct transcription of the conversation that you had with William Earl Fikes on the occasion heretofore testified to in the Chaplain's office at Kilby Prison?

A. It is.

Q. Mr. Baker, at one time in the course of the recording, the noise indicated a stop. Was that machine stopped for any length of time, or was there a change in the conversation, or what was that?

A. The machine was cut off and turned immediately back on. Not more than a few seconds.

The Court: By whom?

The Witness: By me.

Q. Did any conversation take place while you turned the machine off and before you turned it back on?

A. No, sir.

Q. Now, the various noises that are heard in there, some slamming noises, do you know what they purport to represent?

A. Yes, sir, I do.

Q. What are they?

A. Automatic doors to the various cells or the corridor doors at Kilby Prison.

Q. How are they operated? Manually?

A. By an electrical switch board in a cubical near the front of the building.

Q. Now, Mr. Baker, did the opening or closing of any of those doors in Kilby Prison record a sound on that tape?

A. Yes, sir, the opening and closing should sound on there. Yes, sir.

Q. And I will ask you if that was a complete transcription, and a true and correct transcription of the conversation that was had by you and William Fikes on that occasion?

A. It is, yes, sir.

Q. Mr. Baker, at any time while that record was in [fol. 591] process of being made, did you or anyone slap the defendant, or make any act or show of violence against him or do anything to him?

A. No, absolutely not, sir.

Q. Now, Mr. Baker, subsequently or after this recording that you have just testified to or about, did you have occasion to talk to this defendant, William Earl Fikes, on any other occasion?

A. Yes, sir.

Q. When was that?

A. On one occasion, Tuesday, May 26, 1953.

Q. Tuesday, May 26, 1953.

A. Yes, sir.

Q. Where was that conversation had?

A. In the Warden's office in Kilby Prison, Montgomery, Alabama.

Q. Who was present at that time?

A. The Warden, Mr. Burford; and the Warden's secretary, Mrs. Chambliss; Mr. Henry Reese, the solicitor of Dallas County, Alabama; Mr. James Hare, the Solicitor; Lt. Ware and myself.

Q. And did you have a conversation with this defendant then?

A. I did.

Q. In whose office was that conversation had?

A. In Mr. Burford's office.

Q. Where is that office located in Kilby Prison?

A. It is on the right at the immediate front of the prison as you go inside of the door.

Q. And who is Mr. Burford?

A. Mr. Burford was the warden of Kilby Prison at that time.

Q. Now, Mr. Baker, did you or anyone within your presence or hearing at that time make any threats, show of violence, or offer of violence against William Earl Fikes to get him to talk?

A. No, sir.

Q. Did you threaten him in any way to get him to talk?

A. No, sir.

Q. Did you make him any promises or hopes of reward or promises of immunity at that time to get him to talk?

A. No, sir.

Q. Did anyone within your presence or hearing make any threats against him to get him to talk?

A. No, sir.

Q. Did anyone within your presence or hearing make any offers of reward or hopes of reward or promises of immunity to get him to talk?

A. No, sir.

Q. And in whose presence did he talk?

A. In the presence of Mr. Burford, the warden of Kilby Prison, the warden's secretary, Mrs. Chambliss, Mr. Henry Reese, Mr. James Hare, Lt. Ware and myself.

Q. At that time, Mr. Baker, I will ask you if a record was made of a conversation had with William Earl Fikes?

A. There was.

Attorney Hall: We would like the privilege or opportunity to examine this witness on voir dire.

Solicitor Hare: We will give you an opportunity when we [fols 592-594] get around to it.

The Court: You will have that opportunity before the introduction of it.

Q. Was a record made of this conversation?

A. Yes, sir.

Q. And who made that record?

A. Mrs. Chambliss.

Q. How was this record made?

A. She took it down in shorthand and typed it up in question and answer form.

Q. Now, when did she type it up?



A. Immediately.

Q. Immediately. Can William Earl Fikes read and write?

A. Yes, sir.

Q. On this occasion was that statement given to him to read?

A. Yes, sir.

Q. Did he read it?

A. Yes, sir.

Q. Now, I will ask you further if that statement was read to him?

A. Yes, sir, it was.

Q. Who read it to him?

A. I did, sir.

Q. And I will ask you if he affixed his signature anywhere on that statement?

A. He did.

Q. Where did he affix his signature?

A. On each page, on the margin of each page, and on the bottom of the last page.

Q. And I will ask you if those pages bear any signature?

A. Yes, sir.

Q. Whose signature is signed to it?

A. William E. Fikes.

Q. Are there any witnesses shown?

A. Yes, sir.

Q. Who?

A. Lt. Ware and myself.

Q. How many pages in all were taken or constitute that statement?

A. Five, sir.

Q. Are those pages numbered?

A. Yes, sir.

Q. I will ask you to examine those pages and tell me whether the name of William Earl Fikes is written on each of those pages.

A. On each page, yes, sir.

Q. Who wrote that name?

A. William Earl Fikes.

Q. Was that written in your presence?

A. It was sir.

Q. As to the signature on the last page?

A. Yes, sir.

Q. And as to each writing of his name by himself as it appears on the other pages?

A. Yes, sir.

[fol. 595] Cross Examination.

By Attorney Hall:

Q. Captain Baker, I believe you identified this paper—we withdraw that. You are Captain J. Wilson Baker of the Selma Police Department?

A. Yes, sir.

Q. You are the same Captain Baker who previously testified in this case and you were on the stand yesterday? That's right, isn't it?

A. Yes.

Q. And you did testify with reference to witnesses and certain signatures on this paper, didn't you?

A. That's right.

Q. This is the same paper Mr. Hare asked you about yesterday?

A. I imagine so. (Attorney Hall hands paper to witness.) Yes, that is the same paper we had yesterday evening.

Q. Now, Captain, on what date did you say this paper was executed, sir?

A. On a Tuesday.

Q. Do you recall the date of the month?

A. May 26.

Q. May 26?

A. Yes, May 26, 1953.

Q. And on what date, sir, was the recording, which was played in this Court previously, made?

A. On a Thursday. Thursday before that date.

Q. And what date was that, sir?

A. I believe it was the 21st. I am not sure.

Q. So that five days intervened between the making of the recording and the execution of this paper. Is that right, sir?

A. Yes.

Q. Can you explain to this Court why?

A. No reason why that I know of.

Q. After you had made the recording on Thursday, you decided later on that you wanted to come back and have this paper executed, is that right, sir?

A. That's right. We came back on Tuesday.

Q. Between the time that the recording was made and the paper executed, the defendant was subject to questioning by you and other members of the Selma Police Department?

A. Yes, we talked to him on Saturday after that Thursday.

Q. And you talked to him on Tuesday?

A. Yes, the following Tuesday.

Q. Captain Baker, who did you say typed this paper?

A. Mrs. Chambliss.

Q. Mrs. who?

A. Mrs. Chambliss. C-h-a-m-b-l-i-s-s.

Q. Will you identify Mrs. Chambliss for us, sir?

A. Mrs. Chambliss was secretary to the warden at Kilby Prison, Mr. Burford.

Q. And she was present during the time you were talking to Fikes, here (gesturing toward defendant)?

A. Oh, yes.

Q. All during the time?

A. No, not all during the time, I don't think. She was [fol. 596] present during the time of this statement.

Q. The statement was allegedly made?

A. Yes.

Q. How were these statements taken, sir?

A. She took down the conversation in shorthand and then typed it up immediately.

Q. She typed it up in your presence and in this defendant's presence?

A. That's right.

Q. Do you understand shorthand, sir?

A. Some.

Q. Did you understand this shorthand?

A. I didn't look at it.

Q. Is Mrs. Chambliss present in this court room?

A. No, I don't see her.

Q. Do you know whether or no she has been summoned as a witness in this cause?

A. I just don't know.

Q. Now, sir, what was the longest single questioning period that you stated that this defendant went through at your hands before he made this alleged statement?

A. At any one time, not more than three or three-and-a-half hours, at the most.

Q. Captain Baker, it was reported in the newspaper article of the Selma Times-Journal, Sunday, May 24, 1953, quote: "The Perry County negro, who was picked up on suspicion last Saturday night, broke down at six p. m. yesterday and made his complete confession to Capt. Wilson Baker, after a nine-hour questioning session." Is that statement correct, sir?

A. No, that statement is not correct.

Q. This article is signed by Arthur Capell. Did you talk with Arthur Capell relative to the alleged confession?

A. Oh, yes.

Q. Did you give him some information with reference to some alleged confession, sir?

A. Oh, yes.

Q. Did you give him information as to the time that you talked to this defendant?

A. No, I didn't. I don't know whether I talked to Mr. Capell or Mr. Hare. He was in the office.

Q. This article purportedly quotes Captain Wilson Baker.

A. I was in the office and I probably talked with him some, and Mr. Hare some, that evening, I am just positive I didn't give him any time of questioning.

Q. Did you at that time or some time previous to that time, play certain tape recordings back for this newspaper reporter, allegedly made by this defendant?

A. No, I don't think so.

Q. Was any reference made to tape recordings at that time?

A. I don't know. We had some tape recordings and I don't know whether we told him about it or not.

Q. Captain Baker, is it not true that the prosecuting

[fol. 597] witness of this cause is the daughter of the mayor of Selma?

A. Oh, yes, that's true.

Q. Is it not true that the police department of the City of Selma was under terrific pressure?

Special Prosecutor Gayle: We object.

Attorney Hall: If your Honor please, we offer to prove by this man's statement that the Police Department was under terrific pressure to find and apprehend the alleged prowler.

The Court: That's all right, go ahead and answer that.

The Witness: Yes, we were working extensively to apprehend the burglar.

Q. And you were under unusual pressure, sir?

A. Yes, we had not had anything like that before.

Q. Is it not true, sir, that you were assigned especially to this particular case?

A. No, no more than any other case.

Q. From the time this defendant was picked up, until these alleged confessions had been obtained, you devoted most of your time to this case?

A. Yes, until I talked with him on Sunday.

Q. And every day most of your time was given to questioning this defendant?

A. No, I was other places on some of the days.

Q. He remained here Sunday and you talked with him Monday for several hours?

A. Yes.

Q. And Monday afternoon, sir, you took him to Kilby Prison?

A. I talked to him about two hours Monday, and Monday afternoon we took him to Kilby Prison.

Q. How far is Kilby Prison from the City of Selma?

A. About fifty-five miles, I think.

Q. And you made the trip by automobile?

A. Yes.

Q. And you went over there several times?

A. Oh, yes.

Q. Driving over and talking to the defendant several hours and driving back?



A. That's right.

Q. And you deny that you questioned this defendant nine hours, as this newspaper article purports you said?

A. Sure, I deny that.

Q. Did you deny that after this was written?

A. Yes, to the reporter.

Q. Did the paper at any time correct this statement, that you know of?

A. I don't know.

Q. Do you recall any correction?

A. No, I don't recall any, but I don't know whether they did or not.

Q. Did you insist that that allegation be corrected?

A. No, I knew it was not true, and there was no reason for me to insist.

[fol. 598] Q. Who did you say was present at the time this statement was made, sir? The one contained in this paper here?

A. The defendant; Mr. James Hare, the solicitor for the State of Alabama; and Mr. Henry Reese; and Mr. Burford, the warden of Kilby Prison; and Mrs. Chambliss and Lt. Ware of our Department, and myself.

Q. And who witnessed this paper, sir?

A. Lt. Ware and myself.

Q. Both of you gentlemen are members of the City of Selma Police Department?

A. That's right, both members of the Police Department.

Q. Did anyone who is not a member of the Selma Police Department witness this paper, sir?

A. I don't think that they signed it, but they witnessed the confession.

Q. Did they sign it?

A. No.

Q. Are any of their names on there? Any names other than yours and Lt. Ware's, both of the Selma Police Department, on there as witnesses?

A. No, not as a witness.

Q. Is there any handwriting on there identifying anything, other than yours?

A. Yes, William E. Fikes.

Q. With the exception of William E. Fikes, Lt. Ware and Captain Baker?

A. That is all.

Q. What is it? Several loose-leaf sheets?

A. That's right.

Q. How many sheets, sir?

A. One, two, three, four, five.

Q. How many loose-leaf sheets are there, sir?

A. Five.

Q. How are they held together?

A. With a paper clip.

Q. They are not stapled?

A. No.

Q. Not bound in any way?

A. No.

Q. Will you further identify that paper, with reference to any caption?

A. Well, there is no caption on it.

Q. Is there the name of Mrs. Chambliss on it any place?

A. No—I don't think so.

Q. Will you examine it, please, sir, and tell us whether or no it is there, sir?

A. (Witness examines each page) I don't see Mrs. Chambliss' name.

Q. Is there any symbol, or are there any symbols there which might indicate that some stenographer typed that?

A. No, I don't see anything.

Q. Is there anything at all to indicate who typed it?

A. Other than I know.

Q. Anything on the paper itself?

A. Nothing on the paper itself. (Witness again examines each sheet or page) I don't see anything.

Q. And this is an ordinary Gem clip, sir, holding these [fol. 599] papers together?

A. Yes, ordinary Gem paper clip.

Q. Captain Baker, certain numbers were written on these pages with pen and ink. Do you know who wrote those numbers?

A. Oh, yes.

Q. You do know? Who wrote them?

A. I did.

Q. At what time, sir?

A. Prior to the signing of the name William Earl Fikes on there.

Q. Is there any indication where those symbols or numbers are written showing at what time they were written and by whom?

A. No. I wrote them, I did it myself. I know my own writing and I remember doing it.

Q. There are no initials?

A. No.

Q. And no time indicated?

A. No.

Q. Are there any other indications on those pages as to the sequence?

A. No, they don't have anything.

Q. Is there any typewritten number on there?

A. No.

Q. Is there any indication by Mrs. Chambliss indicating which page came first and which second and so on?

A. No, I don't see any. The only thing I see is the sequence of the conversation. I remembered it, and she took it down and typed it.

Q. Captain Baker, do you know Mrs. Chambliss' qualifications as a stenographer?

A. No, I don't.

Q. Do you know whether or no she is acquainted with shorthand and that she could transcribe it accurately, sir?

A. I can't say whether she does or not. I saw her make some symbols and take them to a typewriter.

Q. And whether or no she was accurately transcribing, you don't know, do you, sir?

A. Not from personal knowledge, but I imagine so from the position she holds. All I know is the confession.

Q. As far as you know, sir, it might have been what this defendant or anybody else said, what she was writing on this paper?

A. I am sure it was what he said.

Q. But you couldn't tell from looking at her shorthand symbols?

A. I don't know. I didn't look at them to see. I might have been able to read them.

[fol. 600] Q. I direct your attention, sir, to this newspaper article which I recently mentioned to you and which I quoted. This is a copy of the Selma Times-Journal dated Sunday, May 24, 1953, and I ask the witness to look at it. Will you observe this article here (handing paper to witness and indicating article)?

A. Yes.

Q. What is the caption?

A. "Negro Held At Prison Confesses Rape Guilt And Other Raids Here".

Q. And signed by whom?

A. Arthur Capell.

Q. Will you read this paragraph, please, sir (indicating on paper)?

A. "The Perry County negro, who was picked up on suspicion last Saturday night, broke down at six p.m. yesterday and made his complete confession to Captain Wilson Baker after a nine-hour questioning session."

Q. Now, you did give that information to Mr. Capell?

A. Mr. Capell was present in the office with Mr. James Hare, as I have told you several times, and we did give him a report that this defendant had made certain confessions. But I did not, and no one in my presence told him that we had a nine hour session.

Q. But it does appear here in the paper?

A. Yes, and I don't know how it got there.

Q. And has it been retracted?

A. Not that I know of.

Q. And I believe that you testified previously that the defendant's father saw him at Kilby Prison at some time?

A. The defendant told me his father came on Sunday— [fol. 601] that he had talked with his father on Sunday prior to signing this paper.

Q. What Sunday would that have been?

A. On the 24th.

Q. The 24th. So, as a matter of fact, sir, if he talked to his father on the 24th., it was after you had told someone that the defendant had confessed, isn't that true, sir?

A. Oh, yes. Yes.

Q. It was afterwards?

A. Yes.

Q. And his father was not allowed to see him prior to some alleged confession, isn't that true, sir?

A. His father made no request of me to see him, and the defendant didn't request to see his father.

Q. Until after he had been in custody a week?

A. That's the only time he made a request of me to see him.

Attorney Hall: If your Honor, please, we don't want to impose upon the Court—

(There is a slight pause in the proceedings, while the defense counsel consult together.)

Q. Captain Baker, are you familiar with the defendant's educational attainments?

A. No. I believe he told me how far he went in school, but I am not certain—I don't remember.

Q. In your best judgment, how far did he go in school?

A. If I remember right, I believe he said he was in the fifth grade in school.

Q. Fifth grade, sir? Do you recall testifying previously as to what this defendant told you with reference to his education?

A. No, I don't remember what I testified.

Q. But you did testify previously?

A. Yes, I did testify previously.

Attorney Hall: I don't know if this should go in—this is leading the witness, refreshing his recollection.

Q. Will you examine this, please sir, from here to here (indicating), go back—(hands witness transcript of previous trial of this defendant). That is your statement?

A. (Witness turns pages of said transcript) I guess so. According to this, I testified to the third or fourth grade To the best of my knowledge.

Attorney Hall: We would like for that to go in.

Q. After refreshing your recollection, you previously testified that he had completed the third or fourth grade?

A. I said I thought he did. The best I remember, he told me about the fifth grade—I don't know what it was.

Q. According to this statement. You say, "He told me"?



[fol. 602] A. According to that, he told me he completed the third or fourth grade. Or fifth, I don't know.

Q. And that was your previous testimony with reference to his education?

A. Yes, that's right.

Q. And has he told you anything different since that time, sir?

A. Oh, I haven't asked him anything further about it.

Q. Have you investigated further, sir, since that time?

A. No.

Q. So that at this time you have no reason to think that he went beyond the third or fourth grade in school?

A. Only that is the way I remembered it, that's all.

[fol. 603] Redirect Examination.

By Solicitor Hare:

Q. Mr. Baker, with reference to these five sheets of paper shown to you previously and about which you have previously testified, you say there are some typing, changes and alterations, were those changes and alterations made before or after the defendant signed that statement?

A. Before he signed it.

Q. As to his educational qualifications, can he read and write?

A. Oh, yes.

Q. Have you seen him read?

A. Yes, sir.

Q. Have you seen him write?

A. Yes, sir.

Q. I'll ask you if those five sheets of paper, which you have testified to, were given to the defendant to read?

A. Yes, they were.

Q. Did he read them?

A. He did.

Q. And I'll further ask you, Mr. Baker, if those five sheets of paper were read to this defendant after he had read them?

A. They were.

Q. Who read them to him?

A. I did.

Q. And I'll ask you, Mr. Baker, when did he sign those papers?

A. Immediately after he read them and I read them to him, then he signed them.

Q. He had an opportunity to read them?

A. Yes.

Q. And he did read them?

A. Oh, yes.

Q. And you read those five sheets of paper to him?

A. That's right.

Q. And it was then that he signed them?

A. Yes.

Q. Who was present at that time?

A. You, Mr. Hare, and Mr. Reese and Mr. Burford and Mrs. Chambliss and Lt. Ware and myself.

Q. And that was where?

A. In the warden's office at Kilby Prison in Montgomery, Alabama.

Q. I will ask you to examine the back of those sheets of paper, and can you tell me where that stationery came from?

A. Yes, sir.

Q. Where did they come from?

A. State Department of Corrections and Institutions, Montgomery, Alabama. J. M. McCullough, Jr., Director.

Q. Does it bear a seal or anything?

A. Bears the seal of Alabama, Great Seal.

[fol. 604] Q. And that was on each sheet of paper?

A. Yes, sir.

Q. Now, Mr. Baker, I'll ask you to examine each of those sheets of paper and see if they bear any written signature.

A. (Witness examines each page) They do.

Q. And whose signature do they bear?

A. William E. Fikes.

Q. Is he the defendant in this case?

A. He is.

Q. And when did he write his name on each of those sheets of paper?

A. On that Tuesday, the 26th. of May, 1953. After they were typed up he read them and I read them to him, and he signed them.

Attorney Hall: We object to any voluntary statement.  
The Court: Over-rule.

Solicitor Hare: He has already testified. I'll let the thing ride.

Q. Now, Mr. Baker, you said that you talked with this defendant on several occasions.

A. Yes, sir.

Q. On Sunday—

A. (Interrupting) Not on Sunday.

Q. On that Sunday that he was arrested?

A. Oh, yes, on the Sunday he was arrested.

Q. And on that Sunday he asked to talk to Mr. Jack Townsend.

A. He did.

Q. And Mr. Townsend came over here.

A. Yes, sir.

Q. And on Monday he talked to Mr. Horne, his employer?

A. Yes, sir, he did.

Q. And Monday afternoon you took him to Kilby Prison?

A. I did.

Q. Did you talk to him at all on Tuesday?

A. No, sir.

Q. When did you next talk to him?

A. On Wednesday.

Q. Now, when did you next talk to him?

A. On Thursday.

Q. On Thursday. Now, as to this particular conversation you had with him on Saturday, that was Saturday, May 23rd., is that correct?

A. That's right.

Q. And who was there when you talked with him then?

A. Mr. James Hare, you yourself, the Circuit Solicitor.

Q. How did you go to Montgomery that day?

A. You and I went together.

Q. Yes, sir, and approximately what time did we arrive at Kilby Prison?

A. Around eleven-thirty or twelve o'clock.

Q. Did you talk to that defendant any that morning?

A. About fifteen or twenty minutes, Mr. Hare, yes, sir.

Q. What time do they eat dinner over there?

A. Around eleven-thirty or twelve.

[fol. 605] Q. Did this defendant have an opportunity to eat his meal at the regular scheduled hour over there?

A. Yes, sir; yes, sir.

Q. And did you talk to him any after dinner?

A. Yes, sir.

Q. What time do they feed over there in the afternoon?

A. Around four o'clock in the afternoon.

Q. Did this defendant go to eat his meal at the regular time over there?

A. He did, yes, sir.

Q. Did you talk to him after that?

A. Yes, sir.

Q. How long?

A. About an hour after lunch, to the best of my knowledge.

Q. What time did we leave Kilby Prison that night?

A. Around 5:45 or six o'clock.

Q. Shortly after six o'clock?

A. Yes, sir.

Q. And did you ever make a statement or did I make a statement to Mr. Capell in your presence that this defendant had been grilled for nine hours?

A. Not to my knowledge.

Q. Was he at any time grilled for nine hours?

A. No, sir, he was not.

Q. Now, Mr. Baker, these several conversations that you had with him, was there only one matter under investigation at that time?

A. No, sir.

Q. Do you know how many were?

Attorney Hall: If your Honor please, we object to any reference to any other investigations.

Solicitor Hare: I withdraw that.

Q. I will ask you, rather, had there been more than one complaint received by your department at that time?

A. Yes, sir.

Q. Were there a few complaints or numerous complaints?

A. Oh, numerous complaints.

Q. Mr. Baker, I will ask you to examine those sheets of paper (hands confession to witness), and I will ask you if that document is a true and correct transcription of a conversation had with William Earl Fikes on the occasion referred to?

Attorney Hall: We object to that on the grounds he can't testify as to whether or no that is a true and correct copy. His own testimony indicates that he did not take down the shorthand symbols.

Solicitor Hare: I withdraw that question.

Q. And I will ask you to look those documents over and tell me if that is a true and correct and exact transcription of what you read to William Earl Fikes on that occasion [fol. 606] that you have testified to?

A. It is.

Attorney Hall: We object to the answer; and move that the answer be stricken from the record. And, your Honor, we would like to make a motion at this time. In view of the fact that so many voluntary statements have been made made by this witness, we move this Court that the jury be excluded until this paper is proven.

The Court: Over-rule.

Attorney Hall: We reserve an exception.

Q. I will ask you to examine those documents and tell me if they are a true and correct and exact transcription of what was handed to William Earl Fikes for him to read on that occasion?

A. It is.

Q. And I will ask you if those documents are a true, correct and exact transcription of what William Earl Fikes signed on that occasion?

A. It is.

Solicitor Hare: May it please the Court, the State at this time offers in evidence as State's Exhibit No. 1, document consisting of pages numbered one through five, bearing the Alabama Great Seal on the reverse thereof and typewritten contents on the face thereof, and each and every page thereof bearing the signature of William E. Fikes.

Attorney Hall: If your Honor please, we object to its



being received in evidence on the following several grounds—before making this objection, sir, and before the Court rules, we would like to examine this witness on voir dire.

### Recross Examination.

By Attorney Hall:

Q. Captain, I want you to look at these documents or pages again. Is there any indication on any one of those pages as to when they were purportedly executed or written?

A. No dates.

Q. No date at all. Sir, is there any reference to any day, week, month or year anywhere on those pages as to the date of the execution of the paper?

A. No, no. Not that I know of.

Q. So that you could not look at this paper or any one of these pages and tell when they were written?

A. Yes, I can look at these pages and know when they were written.

Q. But there is no date.

A. No, no date. No date.

[fol. 607] Q. And if you didn't know yourself, you couldn't look at the pages and tell.

A. No, I couldn't tell.

Q. And we would like to ask you further, you testified that the name William E. Fikes is written on each of those pages.

A. William E. Fikes, William E. Fikes, William E. Fikes, William E. Fikes, William E. Fikes. (Witness read above names page by page, the same name appearing on each page.)

Q. Take page 1, is there any witness on that signature?

A. No.

Q. Is there any indication as to when that was written in point of time?

A. No, no.

Q. Now, can you put it back with the other pages? Is that easily done?

A. Yes, sir.

Q. Can you look at page 2? Take it loose. Is there a witness to that signature?

A. No, it is not witnessed.

Q. Any indication as to who wrote it or when?

A. No indication on here.

Q. Take page 3 away, sir.

A. This is 3.

Q. Is there any indication at all when that was written, sir?

A. No, no date on it.

Q. Any witnesses names on there?

A. No. No.

Q. On page 4, any indication as to when that was written?

A. No.

Q. Any witnesses names on it?

A. No, only William E. Fikes.

Q. That is who purportedly executed it?

A. That's right.

Q. And that is the defendant, sir?

A. Yes.

Q. And he was at that time in the custody of Kilby Prison at that time?

A. I guess so.

Q. On page 5, is there any indication when that was written?

A. No, no date.

Q. You have all of those pages a loose?

A. That's right.

Q. And you testified that Mrs. Chambliss typed those pages up?

A. Yes, she did.

Q. Did she put any number or symbol on them to indicate which was first and which second?

A. No, I was there and I knew.

Q. I ask you, sir, if Mrs. Chambliss put any indication on them?

A. No.

Q. But there is an indication as to which came first and which second and so forth?

A. Yes.

Q. Who put them on?

A. I did.

Q. If they were not on there, sir, you couldn't tell, could [fol. 608] you, unless you knew, or if there were further and other pages?

A. I think I could.

Q. Is there any indication on there of how this conversation started?

A. Oh, yes.

Q. Is there any statement or anything indicating that they are now beginning the conversation? Anything indicating this was the beginning, or could it be there were several pages preceeding?

A. There weren't.

Q. But is there anything on this sheet indicating that?

A. There weren't. I know.

Q. But there could have been?

A. We didn't make any and so there couldn't have been.

Q. There could be several intervening sheets? They are not bound together permanently.

A. She typed them and I numbered them.

Q. You, yourself, numbered them?

A. Oh, yes.

Q. Now, when you testified before as to alterations, there are several words x-ed out in their entirety?

A. There is one, yes.

Q. And from all indications, it is a word of five letters, is it not, sir?

A. No, there seems to be a skip.

Q. There are five x-es?

A. Oh, yes, five x-es.

Q. And those x-es are over something?

A. Not all of them. One of them is not over anything.

Q. Well, there may be two words, but there are five x-es?

A. I can't tell what is under them. Yes, there are five x-es.

Q. And all right together?

A. That's right.

Q. I direct your attention to page four. And on that page, sir, I direct your attention to here (indicating), after the period here, there is a word x-ed out in its entirety.

A. Two words.

Q. Two words?

A. Yes, I can read them under there.

Q. But they are x-ed out?

A. x-ed out, that's right.

Q. How many x-es are there altogether at that one place, sir?

A. One, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve.

Q. There is another word x-ed out in the middle of this sentence (indicating)?

A. That's right, that's right.

Q. And three x-es are there?

A. That's right.

Attorney Hall: If your Honor please, we now object to the introduction in evidence of this alleged whatever it is, sir—this paper, these five separate sheets of paper bound together with a Gem clip—on the grounds they have not been properly identified, sufficient predicate has not [fol. 609] been laid, it has not been shown who executed them, and the paper does not indicate when it was executed, and there is no way in the world to tell whether this is the entire whatever it purports to be or not, sir, and that it is incompetent for any purpose; and on the grounds that whatever statements may or may not be on this particular paper were extorted from him under duress because of violence, threats of violence, incarceration in the penitentiary and in the City jail, constant questioning—it has been indicated that some of the questioning went as long as nine hours—and that it serves no purpose and is illegal; and that it was taken from this defendant, if taken at all, in violation of all of his rights under the laws and constitution of the State of Alabama and under the Fourteenth Amendment to the constitution of the United States, and that he suffered a loss of equal protection of law as guaranteed to him under the constitution of our State and the Fourteenth Amendment to the constitution of the United States of America.

The Court: Over-rule your objection.

Attorney Hall: We take an exception, your Honor.

The Court: It is in, and you have an exception.

(Above described five sheets of paper accepted in evidence as Plaintiff's Exhibit 1. Said Exhibit is now copied into this transcript and also sent to the Supreme Court as original evidence for its inspection.)

# PLAINTIFF'S EXHIBIT 1

Solicitor: Now you are William Earl Fikes?

Yes sir.

Solicitor: You are 27?

Yes sir.

Solicitor: Where were you born?

I was born in Sprott that's in Perry County.

Solicitor: You live there most all your life?

No sir, live in Marion.

Solicitor: You were living there when you were arrested?

[fol. 610] Yes, sir.

Solicitor: Now Saturday William you remember Mr. Baker and I talking to you on Saturday. What time did we start talking to you Saturday.

I don't know exactly what time it was when you were talking to me about 11:00 A. M.

Solicitor: Not more than eleven before we started talking to you. Then we talked to you some Saturday afternoon.

Yes, sir.

Solicitor: How long did we talk?

Three or four hours or longer.

Solicitor: You had supper Saturday, what time did you eat?

I don't know what time I eat supper.

Solicitor: What time did you feed Mr. Burford, supper period?

Burford: 4:30 P. M. or 5:00 P. M.

Baker: It was about 4:30 P.M. when you were fed. Then after you eat your supper we got the machine out and took down what you said.

Yes, sir.

Baker: That was about 5:00 P. M. Is that right?

Yes sir.



Baker: Since you have been arrested William, has anyone mistreated, beaten or threatened you?

No sir.

Baker: Were you mistreated in jail in Selma, have you been mistreated since you have been over here?

No sir.

Baker: Sunday some of your folks came over here and talked to you Sunday. Have you been mistreated over here?

No sir.

Baker: William has anybody promised you any thing since you have been over here?

No sir.

Baker: Has any body got made at you, cussed you or fussed at you?

No sir.

Baker: William tell me in detail, the night of the week, whether it was raining or not, the night you came in Selma from Marion, when you went into the house where the two children were. Do you remember the night of the week it was?

On friday night.

Baker: Where did you leave the car, or truck?

[fol. 611] It was a truck. I left it by the Buckeye Oil Mill.

Baker: You walked up to the white residential section?

Yes sir.

Baker: Why did you pick out this particular house, William?

I was just walking through there and saw a light.

Baker: How did you get into the house?

I took a piece of wire and unfastened side screen, it was a window.

Baker: Where did you get the wire from?

Off of the back of house, it was a little piece of clothes line.

Baker: You got the wire and opened the screen window?

Yes sir.

Baker: How many holes did you make in the screen?

Two.

Baker: Two holes in the screen?

Yes sir.

Baker: Did you wind the little piece of wire up?  
I bent it crooked so it would unhook the screen.

Baker: Have I showed you the piece of wire since you were arrested?

Yes sir.

Baker: Was it the same piece of wire used in opening the screen?

Yes sir.

Baker: Are there any steps on the side of the house near the window?

Yes sir under the window, little brick steps.

Baker: Did you have to stand on the bricks to reach the window?

Yes sir.

Baker: After you unfastened the screen, what happened?  
I went around and unhooked a chain latch on door.

Baker: Did you open the door and leave it open?

No, sir, I just unfastened it.

Baker: Did you get any thing out of the kitchen?

Yes, sir, a knife.

Baker: What kind of knife?

Butcher knife.

Baker: Regular butcher knife like you use in a kitchen.

Yes sir.

Baker: What did you do then William?

[fol. 612] I went on up through the kitchen into the bedroom.

Baker: Now William the window you went into the house, was it a bedroom?

Yes sir.

Baker: Go ahead, what was in that room?

A little child in bed.

Baker: Did you touch or bother this child in any way?

No sir.

Baker: After you got the knife out of the kitchen you went back into the bedroom where the lady was?

Yes sir.

Baker: How many persons were in the room?

Lady and little child.

Baker: Was the child in bed with the lady?

No sir in another little bed or crib beside the bed.

**Baker:** What did you do William?

I made attempt to get down across the bed.

**Baker:** Did you have the knife in your hand?

Yes sir.

**Baker:** What happened then?

She woke up and pushed me off and she tussled with me into the living room.

**Baker:** Was there a light in the bedroom?

There was one on in the kitchen, yes sir there was one on in the bedroom.

**Baker:** You tussled out of the bedroom into the living room?

Yes sir.

**Baker:** That is, you were tussling with the white lady?

Yes sir.

**Baker:** What happened after you got to the living room William, tell exactly what happened.

I fell over a coffee table, stool or something.

**Baker:** Did the white lady fall too?

Yes sir.

**Baker:** What did you say to her when you fell while you were down on the floor? Tell us what you said.

I told her to open her legs and give me a little.

**Baker:** Did you have the knife in your hands?

Yes sir.

**Baker:** Which hand did you have the knife in William?

Left hand.

**Baker:** Are you left handed William?

Yes sir.

**Baker:** Did you hold the knife up over her when you told her to spread her legs William? Just go ahead and tell us what happened.

I held the knife over her and she tussled it out of my hand and I got up and run out of the house.

[fols. 613-616] **Baker:** When you got up and left William and run out of the house William did the white lady chase you?

Yes sir, part of the way.

**Baker:** Did she chase you as far as the kitchen?

Yes sir.

**Baker:** When you left the house, did you go out of the

same door you first unfastened when entering the house?

Yes sir.

Baker: William you went into this house looking for a white lady?

Yes sir.

Baker: You went into that house to have intercourse with a white lady?

Yes sir.

Baker: When you got back into the bedroom with this white lady, do you remember how she was dressed?

She had on pajamas.

Baker: About what time of night was that, do you remember?

About 11:00 P. M. or after.

Baker: William what you are telling me the lady over here is writing it down and you are telling the truth?

Yes sir.

Baker: How were you dressed that night?

I had on khaki work clothes and work shoes.

Baker: And you worked at a service station in Marion?

Yes sir.

(S.) William E. Fikes.

Witnesses: J. Wilson Baker, W. M. Ware.

[fol. 617] MRS. DELORIS STENSON, being duly sworn, testified as follows:

### Direct Examination.

By Solicitor Hare:

Q. What is your name?

A. Deloris Stenson.

Q. Are you married?

A. Yes, sir.

Q. You are Mrs. Deloris Stenson?

A. Yes.

Q. Where do you live?

A. 216 Alabama Avenue.

Q. How long have you lived in Selma?

A. Since last September.

[fols. 618-625] Q. And in March of this year, where were you living?

A. On First Avenue.

Q. On First Avenue. That was in the City of Selma?

A. Yes.

Q. And where did you live on First Avenue?

A. Eleven-ten First Ave.

Q. Eleven-ten. Where is that house located?

A. On the right side of First Avenue, right off of Broad.

Q. Do you know where it is located with reference to Brown Drug Company?

A. Yes, it is up east.

Q. It is east from Brown Drug Company?

A. Yes.

Q. On which side of the street is Brown Drug Company?

A. On the left-hand side going up Broad.

Q. And you lived on First Avenue, just off of Broad Street?

A. Yes.

Q. Mrs. Stenson, do you know the defendant in this case, William Earl Fikes?

A. Yes.

Q. When did you first have occasion to see him?

A. He was in my room.

---

[fols. 626-627] Mrs. CLAUDE BINFORD, being duly sworn, testified as follows:

### Direct Examination.

By Solicitor Hare:

Q. What is your name, please?

A. Mrs. Claude Binford.

Q. Where do you live, Mrs. Binford?

A. 724 Parkman.

Q. 724 Parkman Avenue, and were you living there in May of this year?



A. That's right.

Q. And have you lived there for sometime pass?

A. Yes, sir.

Q. And you are living there now.

A. That's right.

Q. Mrs. Binford, I will ask you if you know the defendant in this case, William Earl Fikes?

A. Yes, sir.

Q. When did you first have occasion to see him?

A. May 1, about twenty minutes to eleven.

[fol. 628] Redirect Examination.

By Solicitor Hare:

Q. Mrs. Binford, you stated that you saw this defendant, William Earl Fikes, in your home on May 1, 1953. Was that in the day time or night time?

A. Twenty minutes to eleven at night.

Q. Twenty minutes to eleven at night. And what part of your house did you see him in?

A. In the bathroom.

Q. How long did he stay in your house?

A. I would say about seven minutes.

Q. About seven minutes. Did he leave your house?

A. He sure did.

Q. How?

A. Out the window.

Q. What kind of window was that?

A. Very small bathroom window.

Q. And when was the next time, if any, that you saw this [fols. 629-630] defendant, Mrs. Binford?

A. On May 18, on Sunday afternoon.

Q. On Sunday afternoon, May 18. And where did you see him?

A. At the court house—I mean the City building.

Q. And where was he when you first saw him there?

A. He was in a line of about seven or eight men.

Q. Were they whites or negroes?

A. Negroes.

Q. And did you identify him in that line-up?

A. I picked him out of the line.

Q. And the person you picked out of the line is this defendant here, William Earl Fikes?

A. Right.

Q. And he is the same person you saw in your bathroom on the night of May 1, 1953?

A. Yes, sir.

Solicitor Hare: That's all.

Recross Examination.

By Attorney Hall:

Q. Mrs. Binford, when you first saw this defendant, did he have on a mask or anything?

A. No, he didn't.

Q. You saw him full face?

A. Yes, I did. I saw him.

---

[fol. 631] W. D. BAILEY, being duly sworn, testified as follows:

Recross Examination.

By Attorney Hall:

Q. Mr. Bailey, you were one of two police officers who [fol. 632] arrested this defendant, were you not, sir?

A. Yes, sir.

Q. And you recall the occasion of the arrest?

A. I do.

Q. What were the circumstances, sir?

A. Just placed him under arrest for investigation.

Q. How was it he was called to your attention, sir?

A. We had a call to this service station where he was at.

Q. From whom?

A. Radio operator.

Q. Where were you at the time you got the call?

A. In east Selma in a police car.

Q. Cruising in east Selma, is that right?

A. Yes.

Q. And you got a call from the radio station of the

Police Department of the City of Selma. Do you recall what that order was at that time?

A. To see a party at Deason's Service Station on Broad Street.

Q. Did it name the party, sir?

A. No, it didn't.

Q. And you proceeded forthwith to Deason's Service Station on Broad Street?

A. That's right.

Q. When you got there, what did you find?

A. We found three white fellows and one negro—three or four white fellows.

Q. Where did you see the negro?

A. Sitting on the back seat of the car.

Q. And the negro was this defendant?

A. Yes, sir, that's right.

Q. What was he doing?

A. Sitting on the back seat of the car.

Q. Who were the three white men?

A. Mr. Jake Youngblood was one, and I disremember the others.

Q. What did you do?

A. Got out of the police car.

Q. What did you do then?

A. Walked to the side of the car and placed this boy under arrest.

Q. Why?

A. Because we had a call to pick him up.

Q. As I understood you, sir, your first answer was your call was to proceed to Deason's Service Station and see about it. Did that mean to pick the defendant up, sir?

A. That's right.

Q. That was what your call meant?

A. Yes.

Q. Was he breaking any law when you saw him?

A. Not at the time, no.

Q. Did you see him break any law?

A. No.

Q. Did you have any reason to believe he had broken any law?

A. Yes.

Q. You did have reason, sir? How?

A. From the man that told me.

Q. Who was that?

A. Mr. Jake Youngblood.

Q. What did he tell you?

A. He asked us to take him in custody.

Q. Now, Mr. Jake Youngblood was not at that time a [fol. 633] member of the Selma Police Department, was he?

A. Don't know.

Q. In your best judgment, was he?

A. I wouldn't say.

Q. Have you ever seen him in uniform?

A. No.

Q. Have you ever seen him in the uniform of a police officer of the City of Selma?

A. No.

Q. How long have you been a policeman, sir?

A. Three years.

Q. Three years. Have you ever known him to be a policeman of the City of Selma since you have been there?

A. No, I haven't.

Q. So, in your best knowledge, at the time he asked you to pick him up he wasn't a policeman.

A. I wouldn't know. I wouldn't know whether he was or not. He could have been a detective, so far as I know.

Q. Was he a detective, sir?

A. Not as far as I know. I don't know.

Q. But you did pick him up at the request of this Mr. Jake Youngblood?

A. Yes, sir.

Q. Did you take him before a magistrate?

A. I carried him to the police station.

Q. When you got him there, what did you do?

A. We booked him.

Q. Booked him on what charge, sir?

A. On investigation.

Attorney Hall: That's all.

# Redirect Examination.

By Solicitor Hare:

Q. Mr. Bailey, did you have any conversation with Mr. Jake Youngblood at Deason's Service Station on the occasion that you arrested this defendant, in the presence and hearing of this defendant?

A. Yes, sir.

Q. What did Mr. Youngblood tell you?

A. He told us he had—

Attorney Hall: (Interrupting) If your Honor please, we object to his answering this question. It is purely hearsay.

Mr. Youngblood is not in this Court and we have no opportunity to cross-examine Mr. Youngblood.

The Court: Over-rule your objection.

Attorney Hall: We take an exception, sir.

Q. What did he say?

A. He stated to us that he found the boy wandering around in the alley beside his house and he brought him to the service station.

Q. Yes, sir, and do you know what alley that is?

A. I understand it is the alley that runs between his house and the service station.

Q. Are there residences in that section?

A. Yes, sir.

[fols. 634-639] Q. Are they white or negro residences?

A. White.

# Recross Examination.

By Attorney Hall:

Q. That is a public alley, isn't it, sir?

A. I don't know.

Q. Do you know it to be a private alley?

A. I don't know.

Q. You don't know whether it is public or private?

A. No, I don't.



Q. And that alley is how far from the colored Masonic Building?

A. Approximately a block and a half.

Q. I see. And that alley is located where, sir? Between what streets?

A. Between Broad and Lauderdale.

Q. Broad and Lauderdale. And near what cross-streets, sir?

A. Jeff Davis.

Q. Between Broad and Lauderdale, near Jeff Davis.

A. That's right.

Q. And Jeff Davis is how far from the colored Masonic Building?

A. About a block and a half.

Q. And the closest negro is a block and a half away?

A. About a block and a half.

Attorney Hall: That's all.

#### Redirect Examination.

By Solicitor Hare:

Q. What time was it when you received the call?

A. We received the call at 12:08.

Q. Was that in the day time or night time?

A. Night time.

Q. You mean eight minutes after midnight?

A. Yes, sir.

#### Recross Examination.

By Attorney Hall:

Q. Was there any curfew on at that time, Mr. Bailey?

A. Not as I know of.

Q. Was there any law of the City of Selma that anybody could not walk down a public alley after twelve o'clock?

A. I don't know.

Q. Had you picked up several persons and held them for investigation, as a result of some alleged burglaries?

A. Yes, sir.

[fol. 640]: THOMAS H. HORNE, being duly sworn, testified as follows:

Direct Examination.

By Attorney Hall:

Q. State your name, please, sir.

A. T. H. Horne.

Q. Where do you live?

A. Marion, Alabama.

Q. What county? Is that in the State of Alabama?

A. Yes,

Q. And in what county?

A. Perry, County.

Q. How long have you lived there, sir?

A. Since '38.

Q. Are you a native of Perry County, sir?

A. Yeah.

Q. Have you lived in Perry County, Alabama, all of your life, sir?

A. No.

Q. What portion of your life?

A. From approximately '30 to '38 I lived away.

Q. Where, sir?

A. Hale County.

Q. Is that in the State of Alabama, sir?

A. That's right.

Q. So that all of your life you have lived in the State of Alabama, is that right, sir?

A. That's right.

Q. Now, what is your business, Mr. Horne?

A. Insurance.

Q. And how long have you been in the insurance business, sir?

A. About two years.

Q. Mr. Horne, I will ask you what was your business in April and May of 1953, sir?

A. Service station, motor court and insurance business.

Q. So you were operating a service station and motor court in addition to your insurance business in April and May of 1953.

A. That's right.

Q. Where was that service station located?

A. Marion, Alabama.

Q. Marion, Alabama. Mr. Horne, do you know this defendant here?

A. I do.

Q. State his name, please, sir.

A. William Earl Fikes.

Q. Was he ever in your place, sir?

A. He was.

[fol. 641] Q. Has he worked for you, sir?

A. He did.

Q. Was he working for you in April and May of 1953, sir?

A. He was.

Q. How long had he worked for you at that time?

A. I don't remember exactly.

Q. In your best judgment, sir.

A. Approximately two or two and a half years.

Q. I see. Would you say that he had worked for you from sometime in 1951 until he was picked up by the Selma police?

A. That would be approximately.

Q. Approximately. But no later than 1952?

A. That's right.

Q. During all of 1953, from January until the time he was picked up by the Selma police, he was in your employ?

A. He was.

Q. How long have you known this defendant, sir?

A. Since '38.

Q. Since 1938. Do you know his general reputation in the community in which he lives?

A. Which—?

Q. I withdraw that. Does he live in Marion, Alabama, sir? Or did he live there prior to his arrest?

A. He did.

Q. And he has lived in Marion, Alabama, all of the time that you have known him, is that right, sir?

A. That's right.

Q. Do you know his general reputation, sir, in the community in which he lives?

A. It was good.

The Court: Answer yes or no. Do you know it? Do you know his reputation in the community in which he resides?

The Witness: Yes, sir.

Q. Do you know it, sir? His general reputation in the community in which he resided, prior to his arrest?

A. Part of the time that I knew him he was gone.

Q. Do you know his general reputation in the community in which he resided prior to his arrest?

A. Yeah,

Q. Was it good or bad, sir, prior to his arrest?

A. It was good.

Q. What was the nature of his employment with you, sir?

A. The nature? The type work?

Q. Yes, sir. What kind of work did he do?

A. Worked in the service department.

Q. And will you explain just what that entails, sir?

A. Washing windshields, brushing out floor boards, washing and greasing, and general cleaning.

Q. Would you say general service station duties, sir?

A. Yes.

Q. Now, what time of day did he usually come to work, sir?

[fols. 642-656] A. Seven o'clock in the morning.

Q. And what were his hours after that?

A. Normally he was there until nine or ten at night.

Q. Until nine or ten at night.

A. Until I told him he could leave.

Q. And as a general rule that would be nine or ten o'clock at night?

A. That's right.

Q. How far is Marion from Selma, sir?

A. It's twenty-eight miles.

Q. Sir, do you drive that distance often?

A. Quite often.

Q. And do you drive at a normal rate of speed?

A. Yeah.

Q. Approximately how long does it take you to drive that distance?

A. Thirty-five or forty minutes.

Q. Did he have any off days, sir?

A. Yes.

Q. What were they?

A. Every other Sunday.

Q. He wasn't off any other day except Sunday, is that right, sir?

A. That's right.

Q. Was this true in April and May of 1953, sir, and during the entire course of his employment?

A. Entire course of employment.

Q. Did he from March 1, 1953, up until the time he was arrested have any nights off, other than Sunday?

A. No, not in working hours.

Q. Mr. Horne, do you recall whether or no this defendant failed to report for work at any time in 1953, prior to his arrest?

A. He did not.

Q. He reported every day that he was supposed to work in 1953, before he was arrested?

A. That's right.

Q. You are positive of that?

A. Positive. One exception, when he was sick. He was burned, scalded all over.

Q. Do you recall the approximate date? Was that in April or May of 1953?

A. I don't recall the date. The doctor will give you that.

Q. But it was not in April or May, was it, sir, in your best judgment?

A. I can't answer that. I don't recall.

Q. But he was burned and scalded all over at that time and under the care of the doctor?

A. He was in bed all of that time.

Q. How long was he off at that time? Do you recall, sir?

A. Approximately four days.

Q. But that was the only time he failed to report for work?

A. That's right.



[fol. 657] BRADY BAMBURG, being duly sworn, testified as follows:

Direct Examination.

By Attorney Hall:

Q. Will you state your name, please, sir?

A. Brady Bamburg.

Q. Where do you live?

A. Marion.

Q. How long have you lived in Marion?

A. About twenty years.

Q. Were you living there in April and May of 1953?

A. That's right.

Q. And what was your occupation at that time?

A. I was working at the Pan-Am filling station, general manager of the filling station.

Q. Which filling station was that, sir?

A. Horne's Pan-Am.

Q. Is that the filling station which Mr. Thomas H. Horne had?

A. Yes.

Q. And Mr. Thomas H. Horne was the owner of that station at that time?

A. Yes.

Q. Do you know the defendant?

A. I do.

Q. State his name, please, sir.

A. William Earl Fikes.

Q. How long have you known him, sir?

A. I knew him since about August of '52.

Q. You were manager of the filling station at which William Earl Fikes was working at the time of his arrest in this cause?

A. That's right.

Q. It is the same filling station operated by Mr. Horne?

A. That's right.

Q. I believe you testified that you were the manager of this filling station. Tell the Court what your duties were as manager in April and May, 1953.

A. Either to do it, or see that it is done, the things that were to be done there. Catch the cars at the front and the ones that came there for service.

Q. To do everything, or see that it was done?

A. Yes, sir.

Q. How regularly did you work, or did you have off days?

A. We closed every Sunday afternoon, and didn't have any off days at all.

Q. With reference to hours per day, what time did you go to work?

A. About eight in the morning.

Q. And how late did you stay?

A. From ten-thirty to eleven.

[fol. 658] Q. Why did you stay so late?

A. We didn't have any certain time to close, just when business quit coming.

Q. You never quit early?

A. Ten-thirty was standard closing time.

Q. That is every day except Sunday?

A. Yes.

Q. And you worked every day?

A. Yes, sir.

Q. Do you recall being off any Friday in March, April or May, 1953?

A. No, I don't. I work every day.

Q. With the exception of Sunday?

A. We're open Sunday mornings.

Q. Now, you work every night, too, of course, until closing time?

A. Yes.

Q. Would there be any nights when you wouldn't be present and Mr. Horne would be there at closing time?

A. No, there wouldn't be. If any time I got off, maybe in the afternoon or sometime in the morning, but I never did take off any time at night.

Q. Will you tell this Court and jury what hours this defendant worked?

A. His time was from seven in the morning, and no certain time at night, just whenever convenient for him to

leave, but his hours was up at 8:30. And lots of time he would stay until business quit and I left.

Q. Did he stay on more time than he left at 8:30?

A. That's right.

Q. Can you tell the Court what time he usually left?

A. During the week and the first part of the week, he generally left around 8:30 or nine o'clock; and during the latter part of the week there was a lot of traffic and he stayed on later Thursday, Friday and Saturday. Thursday, Friday and Saturday he stayed on until nine and ten o'clock.

Attorney Hall: If the Court please, may we have a few minutes, sir?

The Court: We will take a ten minutes break.

(Court stands in recess a few minutes, then trial is resumed.)

Q. Mr. Bamburg, I believe you just testified that on the week-ends with reference to time worked, Willie worked the latest hours?

A. That's right.

Q. Beginning on what day in the week, did you say?

A. Thursday afternoon and Friday, that's the biggest.

Q. Friday was your heaviest day, is that right, sir?

A. That's right, Friday and Saturday.

Q. Did he ever leave Friday or Saturday?

A. I don't recall that he did.

Q. What would be the approximate time that he would leave on Friday?

[fols. 659-661] A. Generally from nine-thirty on until I closed. Lots of times he would stay until I closed.

Q. Generally what time did you close on week-ends?

A. It was bad on week-ends. It would be ten-thirty and sometimes eleven and even later.

Attorney Hall: If your Honor please, we are going to ask this Court to take judicial notice of the fact that April 24, 1953, fell on Friday. The calendar shows it, sir.

The Court: Yes. The Court takes judicial knowledge that April 24 fell on a Friday.

By Special Prosecutor Gayle:

Q. Mr. Bamberg, were you with this boy all the time? At night and in the day, too?

A. I was with him there at the station the hours we worked.

Q. After that, were you with him at night?

A. No, sir.

Q. When he left the station, you don't know where he went, do you?

A. No, sir.

Q. Do you know whether he had a truck hid out in another county? Of your own knowledge.

A. No, sir.

Q. Do you know yourself whether he had a truck in this county—in this county?

A. I do know he was not financially able to own it.

Q. Do you know what his people have?

A. I have a pretty good idea.

Q. How much money does his father have in the bank now?

A. I don't know.

Q. You have no idea, do you?

A. No, sir.

Q. He could have had \$5,000.00 in the bank and you wouldn't know it, would you?

A. I wouldn't know it.

Q. And yet you just stated that you knew all about his circumstances and his family's circumstances. Didn't you just state that to the jury?

A. I stated what I knew.

Q. And you don't know what they had, do you?

A. No, sir.

Q. Then you don't of your own knowledge know whether he owned a truck at that time, do you, sir? Of your own personal knowledge.

A. No, sir, I don't know whether he did away from there or not.

Q. You don't know. How long did he work there with you, Mr. Bamberg?

A. The whole time I was there. I was there from about August, up until the time he——

Q. (Interrupting) August of what year?

A. That would be August of '52.

Q. From about August, 1952, until what time?

A. Until he was caught down here.

Q. When was he caught? Caught down here.

A. I don't know the exact date.

[fol. 663] Q. But you can remember, you are positive, that on the first day of April he owned an automobile.

A. The reason why I knew was——

Q. (Interrupting) I didn't ask you why. Are you positive or not on the first day of April?

A. I didn't say the first day of April.

Q. How far will you go?

A. I wouldn't say later than the tenth.

Q. And you are telling this jury on every night, Friday and Saturday nights, that he never left that filling station between the hours of nine and ten. Is that right?

A. No, sir.

Q. You are positive of that? Not a night? Were you there every night?

A. I was there.

Q. All right. Then when Mr. Horne was there, were you there with him?

A. Practically all the time. There were times he wouldn't be there.

Q. And times you wouldn't be there?

A. Yes, sir, I was there at night.

Q. You were there every night?

A. That's right.

Q. And for that period of time there wasn't a single time he left there before nine o'clock on a Friday or Saturday night?

A. I'll say that, yes, sir.

Q. And you looked at the clock every night when he left?

A. No, sir, I didn't say I looked at the clock.

Q. Did you look at the clock?

A. I had a pretty good idea. I had a watch.

Q. Then you don't know of your own knowledge?



A. When you look at your watch every few minutes, you generally know.

Q. Did you look at your watch every few minutes every night?

A. When it was getting close to closing time, I'd look every ten or fifteen minutes.

Q. You didn't look at your watch at twenty minutes of nine and Willie was gone?

A. No, sir.

Q. Did he ever leave there at nine-thirty?

A. When nine-thirty come or any time after that that he wanted to go, it was up to him.

Q. Didn't you testify that he could get off at eight-thirty?

A. That's right, the first of the week, when business was slack.

Q. And you never had a slack week-end? It was always real busy?

A. It was pretty busy. As a rule.

Q. Did you have any—ever have any that wasn't good?

A. We did have some that weren't good.

Q. On March 18, 1953, what time did he leave that place?

A. I don't remember the hour of that night.

[fol. 664] Q. Well, would you say it was nine o'clock or was it ten o'clock?

A. I wouldn't say it was before nine.

[fol. 665] Redirect Examination.

By Attorney Hall:

Q. Mr. Bamburg, when you say you talked to him, do you mean you asked him questions and told him to do something?

A. Yes.

Q. You don't mean that you had a conversation with him?

A. I don't recall that I did.

Q. You would instruct him in some part of his job?

A. Yes.

Q. Now, what was the nature of his work at the Pan-Am station, sir?

A. Well, he was to grease and change oil in cars, and to wash cars, and there was shrubbery to trim and he always seen after that and kept the front picked up and clean.

Q. When it came to changing oil in cars, you helped on that?

A. Yes, sir.

Q. The greasing, did he do that by himself?

A. Most of it, yes.

Q. You supervised him?

A. Yes.

Q. Do you recall what type of clothes Willie usually wore?

Special Prosecutor Gayle: We object to that, your Honor, what type of clothes he usually wore.

The Court: Sustain the objection.

Q. Mr. Bamburg, I will ask you, sir, if the attendants at that Pan-Am station usually wore uniforms?

A. That's right.

Q. Everybody who worked there wore a uniform, is that right?

A. That's right.

Q. Describe that uniform.

A. Khaki shirt and pants and khaki cap.

Q. And did it have Pan-Am written on it?

A. Yes, sir, and we had a sign on the left shoulder.

[fols. 666-681] Q. And did you invariably wear that uniform every day?

A. Yes, sir.

Q. And particularly with reference to April and May of this year—March, April and May of 1953?

A. That's right.

Q. Mr. Bamburg, have you ever seen William Earl Fikes with a pair of blue jeans on, sir?

A. No, I haven't. I have seen him with dress pants on, but never blue jeans.

[fol. 682] DR. WILLIS EDGAR LEWIS, being duly sworn,  
testified as follows:

Direct Examination.

By Attorney Hall:

Q. State your name, please, sir.

A. Dr. Willis Edgar Lewis.

Q. Where do you live?

A. Tuskegee, Alabama.

Q. What is your profession?

A. Psychiatrist.

Q. Are you duly licensed to practice in this state?

A. I am not.

Q. How is it then—you are now practicing?

A. I am.

Q. At what place?

A. Veteran's Administration Hospital.

Q. That is at Tuskegee, Alabama?

A. Yes, sir.

Q. And you are now a psychiatrist at the Veteran's Administration Hospital at Tuskegee, Alabama?

A. I am.

Q. Of what school are you a graduate?

A. Meharry Medical College, Nashville, Tennessee.

Q. What year?

A. 1924.

Q. When were you admitted to practice as a physician?

A. I was admitted to Tennessee in June or July, 1924, and in West Virginia in September, 1924.

Q. Had you at that time taken any post graduate studies of any kind?

A. Not at that time.

Q. Did you subsequent to that time do any graduate work?

A. I did.

Q. Where?

A. Columbia University, New York.

Q. How long were you there?

A. About ten weeks.

Q. And where did you go from there?

A. Back to the Veteran's Administration Hospital.

Q. I asked you where.

A. Tuskegee, Alabama.

Q. Did you have any further studies?

A. I have studied from time to time while practicing at the Veteran's Administration Hospital, through lectures of [fol. 683] visiting psychiatrists and staff members.

Q. You do specialize in a particular branch of medicine and that is in psychiatry?

A. Yes, sir.

Q. Psychiatry has to do with what type of disease?

A. Nervous and mental disorders.

Q. How long have you specialized in nervous and mental disorders?

A. Since 1926.

Q. Since 1926?

A. Yes.

Q. Doctor, are you the author of any particular books on this subject?

A. No, I am not.

Q. Have you written any treatise or articles at all on this particular subject?

A. I have no published articles.

Q. But you have been in the Veteran's Administration Hospital at Tuskegee, Alabama, since 1926?

A. No, I have been there since 1927, and I was in West Virginia thirteen months before coming there.

Q. Are you a member of the American Board of Psychiatry?

A. I am a Diplomate of the American Board of Psychiatry.

Q. What does that mean?

A. That means I am recognized by that Board to practice in any state in the country.

Q. Doctor, I ask you to examine this document, this portion of this document (indicating), and see if you find your signature anywhere there.

A. I do.

Attorney Hall: Now, I ask that this document be marked for identification.

(Above referred to document is marked by the court reporter for identification, Defendant's Exhibit D.)

Q. Doctor, did you ever have occasion to examine the defendant, William Earl Fikes?

A. Yes, sir.

Q. I will ask you to look at this (handing witness Defendant's Exhibit D for identification). You did identify your signature on this particular document, did you not?

A. Yes, sir.

Q. I will ask you to take this document and tell me on what date you examined this defendant and what the occasion was.

A. June 19, 1953.

Q. Where was the defendant at that time?

A. At Kilby, Montgomery, Alabama.

Q. At what place?

A. Kilby Prison.

Q. Were you alone at that time, Doctor, or in the company of others?

A. I was in the company of two other certified psychiatrists.

Q. Who were they?

A. Dr. Gordon C. Looney and Dr. Allen P. Smith.

[fol. 684] Q. Will you tell the Court what you found on examination of William Earl Fikes on that date?

A. According to our examination, he had some evidence of mental blocking and some retardation; he was somewhat flattened and inappropriate; he seemed to be wrapped in his own thinking; his replies were usually incomplete and of short sentences; it was noted his finger nails were torn off or eroded to the nail bed, which we felt was evidence of his nervous tension. It was our opinion at that time—

Solicitor Hare: (Interrupting) Now, may it please the Court, we object to "It was our opinion at that time".

Q. Just your opinion, sir.

A. It was my opinion at that time that he was suffering from a serious mental disorder, which I diagnosed as schizophrenic reaction simple type.

Q. Will you explain to the Court and jury what you mean by schizophrenic reaction simple type?



A. Schizophrenic reaction simple type is represented by a splitting of the personality of the individual, and in this simple type of schizophrenia there is usually a lowering of the emotional tone, and a flattened and inappropriate aspect. And what we mean by aspect is the feeling tone of the individual. To me, this patient did not seem to realize the seriousness of the situation he was in.

Q. Continue, Doctor. Are you through with your opinion and findings?

A. Yes.

Q. What was the date, Doctor?

A. The date of the examination was June 19, 1953.

Q. Dr. Lewis, assuming that the patient whom you examined—manifested some mental blocking, and while his speech was fairly relevant and coherent he shows psychomotor retardation; and assuming further, sir, that he was emotionally flattened and somewhat inappropriate, showing evidence of beginning mental deterioration, in your opinion, sir; and assuming further, sir, that his thought content was shallow and limited; and assuming further that you found no frank delusions or hallucinations, but his ideation was autistic and his thinking was dereistic and circumstantial; and assuming further that his replies were usually incomplete or with short sentences; and assuming further that his judgment and insight are poor, and that he was suffering from no physical complaints; would it be your opinion, Doctor, that this man—or would you have an opinion as to how long this man would have suffered from schizophrenic reaction simple type?

A. Although a definite statement cannot be made as to the duration of his schizophrenia, judging by the degree of deterioration when we examined him, the duration in my opinion was of six months or longer.

[fol. 685] Q. So you do have an opinion, and that opinion is that he had been suffering from the disease of schizophrenic reaction simple type for a period of six months?

A. Yes.

Q. Assuming further that all of these previous conditions which I have asked you to assume were present, and that he had suffered from this disease for a period of six months on June 19, 1953, would it be your opinion that he

is still suffering from this disease?

A. Yes, sir.

Attorney Hall: That is all.

### Cross Examination.

By Solicitor Hare:

Q. How long did you examine this defendant at the time that you examined him?

A. We examined him between the hours of two and four.

Q. Between the hours of two and four. And that was at Kilby Prison?

A. Yes, sir.

Q. And at the time he was being held under a serious criminal charge?

A. Yes, sir.

Q. At the time that you examined him, did you have any background information or family history or personal history?

A. Only what we took from the patient.

Q. Only information which you took from the patient.

A. We talked with his father briefly.

Q. Doctor, you testified here previously, haven't you?

A. Yes, sir.

Q. And you testified that in your opinion this defendant at the time that you examined him knew right from wrong, is that correct?

A. I don't remember.

Q. Now, Doctor, you said that at the time you examined him that he was apathetic and somewhat depressed and only fairly cooperative, is that true?

A. Yes, sir.

Q. Now, let me ask you, is attentiveness a trait that is common to a schizophrenic, a sufferer from dementia praecox, simple type?

A. Aggressiveness is not a usual symptom.

Q. Is not a usual symptom. Is being cooperative a usual symptom of those diseases?

A. No.

Q. Is the performance of duty in an intelligent way, is that a symptom?

A. That is not a symptom. Sometimes they will cooperate in the performance and sometimes they will not.

Solicitor Hare: That's all.

[fol. 686] DR. GORDON C. LOONEY, being duly sworn, testified as follows:

Direct Examination.

By Attorney Hall:

Q. Will you state your name, please?

A. Gordon C. Looney.

Q. Where do you live, please?

A. Tuskegee, Alabama.

Q. What is your profession?

A. Psychiatrist.

Q. Psychiatrist. When you say that you are a psychiatrist, Doctor, do you mean that you are a specialist in the practice of medicine?

A. Yes. Mental illnesses.

Q. Are you licensed to practice in this State, sir?

A. No, I am licensed to practice in the states of Missouri and Kansas.

Q. Licensed in Missouri and Kansas. What are you doing at Tuskegee, Alabama, sir?

A. Working for the Veteran's Administration, in the Tuskegee Veteran's Administration Hospital.

Q. Doctor, of what school are you a graduate?

A. Howard School of Medicine, Washington, D. C.

Q. Howard School of Medicine, Washington, D. C. What year did you graduate, Doctor?

A. In 1932.

Q. Did you have further studies after graduation, Doctor?

A. Well, I interned in the City Hospital No. 2 in St. Louis. From 1934 until '41 I was connected with the Health Department of Springfield, Missouri, as physician [fol. 687] to the indigent colored people. Since '41 I have been affiliated with the Veterans Hospital at Tuskegee. I

have done graduate work in venereal diseases in 1940 in Washington, D. C. And I did graduate work at New York University from September to December, 1948.

Q. Are you certified by a specialists board?

A. Yes, I am. I took the board examination in '49, May of '49.

Q. May of '49. And you are now a diplomate?

A. Yes, of the American Board of Psychiatry.

Q. Is that the official board, recognized board of psychiatry?

A. It is. It is.

Q. And I'll ask you one thing further about that board, sir. Unless you are certified by that board you cannot set yourself up as a psychiatrist, is that true?

A. Yes, that is true. At least as a recognized psychiatrist.

Q. Doctor, have you written any books on the subject of psychiatry?

A. No, I haven't.

Q. Any articles of any kind?

A. No, I haven't.

Q. I will ask you to examine this portion of this document which is marked Defendant's Exhibit 4 and ask you if you see your name written there? (Shows witness Defendant's Exhibit D for identification.)

A. I do.

Q. Is that your signature?

A. Yes, it is.

Q. Doctor, we ask you to refer to this document and tell us if you had occasion sometime in 1953 to examine this defendant, William Earl Fikes?

A. In association with Dr. Lewis and Dr. Smith I did examine Mr. Fikes on June 19 in Kilby Prison.

Q. Was that June 19, 1953?

A. 1953.

Q. Will you tell this Court what you found on that occasion?

A. Well, when we saw Fikes, we found—

Special Prosecutor Gayle: Not what "we" found.

The Court: They are asking for your findings.

Q. What did you find, sir?

A. When I had occasion to examine Fikes on June 19, 1953, I found him to be somewhat depressed and somewhat appathetic. In other words; he didn't react emotionally to the situation as a normal person would have reacted. He told us that he was incarcerated because of incidents which were supposed to have occurred in March. These things he said he confessed under duress, under threats, and he told us that he had lied on himself. And we questioned him at length regarding his story. We asked him what he was doing in the town where he was picked up, and he said that he had walked down to the colored section to get a sandwich and possibly some coffee, and was on his way back when he was picked up. And he told us [fol. 688] that someone saw him going into an alley, or something like that. We asked him was he guilty of the things he was accused of and he said no. And then we asked him why he confessed, and he said they threatened to throw him in the river or to put him in the hot seat. And we asked him if he knew the penalty for such crimes and he said no. And I asked him point-blank did he commit the crimes, and he said, "No, Doctor, you know I wouldn't do that." And I said, "Why?" And he said, "Because I wouldn't want my wife to know about it." And in my mind, I think that is a very inadequate answer, because there are other considerations that would keep one from committing a very serious crime, and not just not wanting his wife to know about it.

Solicitor Hare: May it please the Court, I think this is all very interesting, but I think it is incompetent testimony, what was said by the defendant on that occasion. And the State objects to any further—

Attorney Hall: If the Court please, we would like to bring out from this defendant—from this witness, that questioning the witness is one method of examination.

The Court: Go ahead.

Q. Doctor, this conversation you were having with this defendant was by way of examination?

A. It was part of the examination.

Q. Continue with your findings.



A. I asked him about how he was thought of in the community, and he said that everyone liked him. And I asked him had he ever had any trouble with anyone or ever been arrested for anything, and he admitted that once he had been arrested for helping his brother steal some tires, but this incident occurred after he came back from service. And I asked him had he ever been in trouble while in service and he said no. And I asked him about his army service record, and he made some statement about being over-seas in the south Pacific a number of months—I don't recall the exact number of months.

Q. Based upon that conversation and examination, what were your findings as to the state of this man's mind or intelligence?

A. I was of the opinion that he was an individual who led an exemplary life in the day time, and then at night things that were quite serious, that you wouldn't expect of an individual that maintained such a good reputation among the people that knew him.

Q. I see, sir. Now, Doctor, does that type of mental disease have a name?

A. Oh, yes, that is a type of split personality. Dementia praecox and schizophrenia.

[fol. 689] Q. I see. Did you form an opinion as to whether or no he had one or either of those diseases?

A. They are both the same thing. I mean synonyms of the same condition.

Q. And in your opinion he was suffering from the symptoms of schizophrenia?

A. He was suffering from schizophrenia.

Q. And now, Doctor, assuming that you did examine this defendant on June 19, 1953—

A. That's correct.

Q. And assuming that after extensive examination with this defendant you arrived at the conclusion or had the opinion that he suffered from schizophrenia or dementia praecox, would you have an opinion as to how long he had suffered from such disease?

A. Well—possibly—it is a difficult question to answer.

Q. Did you form an opinion at that time or would you

have an opinion at this time as to how long he had suffered from such disease?

A. There is one way that you might form an opinion, and that is to go back and get the date, back when this individual's conduct varied from the normal, and on the basis of the fact that he took the tires some months previous to the present trouble, it might be said that his illness began at that time.

Q. Would you say so, sir?

A. I would, because of the fact of the way they were discovered after he stole the tires. He said some of them put the tires on the car and took the car back to the place from where they took the tires. That wasn't such a bright idea, I shouldn't think.

Q. Assuming that all things are true which we first set out for you, sir, and assuming further that this onset of split personality began some four months before—

A. Well, I wouldn't know. I don't remember just when his conduct began to vary from the normal, based on the incident of the tires.

Q. Would you have an opinion as to whether or no that condition still exists at this time, sir?

A. Well, I can say this much, I can say that the condition is rarely recovered from spontaneously, unless proper treatment is given. I haven't seen Mr. Fikes since the 24th. of June.

Q. Assume further, sir, that the defendant has had no treatment of any type since your examination, sir, and assume that he has been incarcerated in Kilby Prison since the 19th. of June, 1953, until the present date—either at Kilby Prison or in the custody of the police or peace officers of the City of Selma and Dallas County, Alabama, would you have an opinion as to whether or no the condition which you discovered on June 19 still exists?

A. I would assume that there is a strong probability [fols. 690-693] that it still exists.

Cross-examination.

By Solicitor Hare:

Q. How long did you examine this defendant?

A. I talked with him for a period of two hours.

[fol. 694] DR. ALAN P. SMITH, JR., being duly sworn, testified as follows:

Direct examination. ✓

By Attorney Hall:

Q. State your name, please.

A. Dr. Alan P. Smith, Jr.

Q. Where do you live, please, sir?

A. Veterans Hospital, Tuskegee, Alabama.

Q. What is your profession?

A. Doctor, specialist in psychiatry.

Q. When you say "doctor", you mean physician and surgeon?

A. Yes.

Q. And you are a specialist in psychiatry.

A. Yes.

Q. Where did you get your medical training? What school?

A. State University of Iowa.

Q. When did you graduate?

A. In 1927.

Q. Are you a licensed physician in the State of Iowa?

A. Yes, and Missouri.

Q. Doctor, are you licensed in Alabama?

A. No.

Q. Where are you working?

A. I am employed by the United States Veterans Administration, Department of Medicine and Surgery, at Tuskegee, Alabama.

Q. Now, Doctor, did you have any other and further studies, after graduating from the Iowa State Medical School?

A. I graduated first from Washburn Municipal University in Topeka, Kansas, in 1917, then I did graduate work in psychology and sociology at the University of Iowa, then I finished medicine in 1927; and I interned and had my residency at the Veterans Hospital in psychiatry, at Tuskegee, Alabama, and I have been—I have had post graduate work in New York at New York University, post graduate at

*Belle View*; and I am certified by the American Board of Neurology and Psychiatry, 1946.

Q. So you are a diplomate?

A. I am a diplomate of the American Board of Psychiatry.

Q. And that means that the American Board of Psychiatry recognizes you as a specialist in psychiatry?

A. Yes. I have had other training, and I was on the staff of the ~~Veterans Hospital in San Antonio~~, Texas, in charge of full ward, and I had service in the army in 1950 during the Korean situation, and I am a Lt. Colonel now in the Medical Corps and commanding officer of 3129 Hospital Circuit Unit at Tuskegee.

Q. Have you had other and further training Doctor?

A. Well, lectures and meetings. And I am the first colored member of the American Psychiatric Association, in 1930, and I am a member of a number of national societies: American Psychiatric Association, Medical Association [fol. 695] of United States Surgeons Association, and I am also a member of the Officers Reserve of the United States.

Q. Doctor, have you any published works to your credit? Any books or articles?

A. I have published seventeen articles in national journals. My last article came out a month ago on the psychiatric approach to rehabilitation.

Q. What periodical carried that article, Doctor?

A. The Journal of the National Medical Association.

Q. The Journal of the National Medical Association. And this was published one month ago.

A. Yes, sir.

Q. Doctor, I show you this portion of this document marked Defendant's Exhibit 4 for identification (showing witness Defendant's Exhibit D for identification) and ask you to see if you find your name written there.

A. Yes.

Q. Is that your signature, Doctor?

A. Yes, it is my signature.

Q. Thank you. We ask you, Doctor, to take this portion of this document and answer the following question: did



you have occasion to examine this defendant, William Earl Fikes, at any time in June of this year?

A. June 19, 1953.

Q. Where did you see him?

A. At Kilby Prison, at approximately two to four p.m.

Q. On June 19, 1953.

A. Friday.

Q. Doctor, will you tell this Court what you found from that examination?

A. You want the diagnosis?

Q. Diagnosis, yes.

A. The diagnosis was schizophrenic reaction simple type.

Q. Schizophrenic reaction simple type.

A. A mental disease which usually is manifested by a slump in personality. That is, the individual is careless in dress and personal appearance, and he lacks interest in life. He lives a dream life, so to speak. And during this dream life he may have what the layman calls illusions. That is, he has false beliefs of things that are unreal. He sees things not there. These symptoms don't manifest themselves in all types of schizophrenia; there are about six basic types. And in addition, the individual's thinking processes are distorted. This is one of the basic symptoms of schizophrenia—we use the scientific term dereistic thinking, by which we mean his thinking is twisted. As an example, he places the events of three different types or more into one situation. As an example: a young man on his way to induction center in 1943, on furlough in 1944 he meets a young [fol. 696] lady in a theatre, in 1947 or 8 his wife may have a baby. In talking to you he will tell you, "I was on my way to the induction center and I went to a show, and while at the show my wife had a baby." In other words, three separate events at different times and places, he correlates into one situation.

Q. Doctor, does he do that at all times, or only when he is in this dream world?

A. Just when in his dream world.

Q. Doctor, assume that you did examine this defendant on June 19, 1953, and assume, sir, that you did find split personality or schizophrenia simple type, would you have



an opinion as to how long a person would have had this particular disease?

A. During our examination, he told me some of the events of his early life, and then he also told me one thing that we didn't know at first, that he was a veteran. And after returning from war he mentioned situations where he became restless and he became a little careless in his behavior pattern. I remember his telling me about stealing some automobile tires in '49. He was influenced by a brother, and the brother got the benefit of the tires which fit his car, and the patient—or the man—didn't get any benefit. Then he told of several other events. He did this, even though his wife and mother advised him not to do it. He was easily influenced. And then later on he told of coming from home—I think he lived in Marion—where he was working. He had a good job, security and everything, and he comes to Selma one night—I think he said to get a hamburger sandwich—and while in Selma he said he parked his car on the wrong side of town and got picked up. And when I asked him what happened, he said, "They put me in jail." And I said, "What were you accused of?" And he said, "I don't know, but I think somebody said something about rape." And I said, "Do you know what stealing and rape mean?" And he said, "Stealing means taking things that don't belong to you." And I said, "Do you know what rape means?" And he shook his head. And I said, "Rape means having sexual relations with a woman under force." And he said, "I wouldn't do that, not to go home to face my mama and wife."

Q. Now, Doctor, from that examination, were you able to form an opinion with reference to the duration, assuming, of course, that you found this patient was suffering from schizophrenia?

A. In view of my experience, I naturally work with veterans, and we notice that so often those veterans who have schizophrenia, their condition usually starts after war, probably due to some incident or stress or strain while in service. And we would, in cases like that, date the situation as precipitated by combat service or some experience in service. Plus what most of our boys have, a maternal fondness, they are mama boys to start off with.

[fol. 697] Q. Then Doctor, you place the beginning of this disease as at the time he was in service?

A. That's true.

Q. And that was some several months or years previous to the time of your examination, is that right?

A. That's right.

Q. Now, Doctor, assuming that you examined the patient at Kilby Prison on June 19, 1953, and assuming that you found that patient to be suffering from schizophrenia simple type, and assuming further, Doctor, that you determined after your examination, both subjectively and objectively, that this disease had existed for some several months or possibly years, would you have an opinion as to whether or not it still obtains?

A. Well, it is my opinion that this disease still obtains.

Q. Now, Doctor, assuming, sir, that a man is suffering from schizophrenia simple type and, as I understand you to explain it, that means that sometimes he has a split personality and he retreats within himself and lives within a dream world. Is that correct, sir?

A. That is correct.

Q. Is it possible that such a person might be told certain things over and over again and might eventually believe that he knew the things that he was told?

A. Well, occasionally these patients in their dream life, they imagine a lot of things—

Special Prosecutor Gayle:—We object, may it please your Honor, to that. It is not responsive to the question.

The Court: Just answer the question.

The Witness: He said by constant repetition.

Q. Now Doctor, assuming that this patient is suffering, as you said, from schizophrenia simple type—this is purely a hypothetical question—assuming that this patient is suffering from schizophrenia simple type, and that someone tells him over and over again of certain things, maybe a story, maybe a series of events, is it possible that that patient eventually believes that he knows of his own knowledge of those things?

A. It becomes a part of him, as we have seen in the Korean situation of brain washing. I mean by that, the

patient can be told—the individual, I won't say patient, can be told certain situations or events, and that constant bombardment of his personality eventually results in it becoming a part of him.

Q. So that he believes that he himself knows of these events?

A. That's right. And which are purely fantasy and in reality he knew nothing about them.

Q. I believe you are familiar with case histories with reference to police work. Are you, or have you had any [fol. 698] experience with that sort of thing?

A. No.

Q. I will qualify my question—

A. What do you mean?

Q. Have you, in the course of your studies, come in contact with patients suffering from that type of mental disease who frequently confess to crimes which haven't been committed?

A. One of the things he said—

Q. (Interrupting) Not this particular defendant, sir, but other persons. Do you know of such cases?

A. Well, that does happen.

Q. Have you known of such cases?

A. We had one young man at our Veterans Hospital who believed that while on—

Solicitor Hare: Now, may it please the Court, we object to these extraneous illustrations like that.

Q. Just answer the question yes or no.

A. I have.

Q. Assume, now, Doctor, that a patient—or not a patient—assume that a subject was suffering from schizophrenia simple type, and on a certain date—assume that date was May 21—or May 24, 1953, and on that date this subject was incarcerated in the State prison, and that he had been questioned over and over again by officials of the State, and that during the questioning he had neither counsel present or friends or members of his family, and that he was told over and over again about certain events or certain crimes that had been committed—

Special Prosecutor Gayle: Now may it please the Court, I am going to object to this entire line of questioning unless this is purely a hypothetical question, and on that basis.

The Court: Is it on that basis?

Attorney Hall: It is on that basis.

Special Prosecutor Gayle: On that basis I withdraw my objection, on the basis that it is a hypothetical question.

Q. Assume that that person was told over and over again that certain crimes had been committed and that he was guilty of committing them. Is it possible, Doctor, in your opinion, that that person might eventually believe he committed those crimes?

A. The constant bombardment of the patient's mind—after all, we are human beings, living organisms—may reach the point of tension and exhaustion, where the individual in crying for relief will do anything to free himself.

Q. And assume, sir, that this patient, this subject, is suffering from schizophrenia simple type, would the presence of that disease have any bearing over whether or not he finally believes that he committed those crimes?

A. It depends upon the type of personality pattern of that individual.

[fols. 699-701] Q. But it is possible in some types?

A. In some types, yes. And if the situation is something that they reject, they become hostile. In these situations the individual usually shrinks or accepts, because it is a painful situation.

[fol. 702] WILLIE FIKES being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. State your name, please.

A. Willie Fikes.

Q. Is that your full name?

A. Yes, sir.

Q. William Earl Fikes?

A. Yes, sir.

Q. What relationship are you to this defendant, William Earl Fikes?



A. I am his father.

[fol. 703] Q. Where do you live?

A. Perry County.

Q. Perry County? What do you mean when you say Perry County? Do you mean you live at Marion, Alabama?

A. Marion, Alabama, yes, sir.

Q. How long have you lived there?

A. Around fifteen or twenty years.

Q. And has Willie, your son, lived there with you most of that time?

A. Yes, sir. Some part of the time he was off working.

Q. Now, where did you live before you moved to Marion, Alabama?

A. At Sprotts, Alabama.

Q. Sprotts?

A. Yes, sir.

Q. In what county is that?

A. Perry County.

Q. Perry County. And how long have you lived there?

A. All my life.

Q. You have lived all your life in Perry County, have you not?

A. Yes, sir.

Q. What kind of work do you do, Willie?

A. Well, I farm. I used to farm and do undertaker work, and construction work, now.

Q. Farming, undertaker work and construction work?

A. Yes, sir.

Q. What kind of undertaker work?

A. Helping direct funerals.

Q. Are you doing that type of work now?

A. No, sir, I quit about a month ago.

Q. Where were you working at that time?

A. H. C. Lee, Marion, Ala.

Q. And what other kind of work did you say?

A. Construction work now.

Q. Do you mean that you help build houses and buildings and that sort of thing?

A. Yes, sir.

Q. Are you a carpenter or brick-layer or what?

A. I am a helper.



Q. Are you doing that kind of work now?

A. Yes, sir.

Q. Are you doing it in Marion, Alabama?

A. No, sir, Jefferson County.

Q. But you still live in Marion, is that right?

A. Yes, sir.

Q. Your wife lives there?

A. Yes, sir.

Q. And you maintain your home and family at Marion.

A. Yes, sir.

Q. I show you this paper marked Defendant's Exhibit C, which purports to be a commitment paper for one Hanie Fikes, Perry County, to the hospital for the insane at Mt. Vernon, Alabama, and ask you to examine it and tell me if you know Hanie Fikes or did you know her (handing Exhibit C to witness).

A. That was my mother.

Q. Where is she now?

A. She's dead.

[fol. 704] Q. When did she die?

A. I think—I forget the month and year. About fifteen years ago, ten or fifteen years ago, something like that.

Q. Where did she die?

A. Mt. Vernon.

Q. She was still in the hospital for the insane when she died, is that right?

A. Yes, sir, that's right.

Q. I show you these papers, marked Defendant's Exhibit A, which purports to be commitment paper of Columbus Oakes, committing him to the State hospital at Mt. Vernon, Alabama, and signed by Judge of Probate J. B. Shivers on the 29th. day of April, 1912, and ask you to tell me who Columbus Oakes was?

A. That was my uncle.

Q. Was he your mother's brother?

A. Mother's brother.

Q. Is he living now?

A. He is dead.

Q. He is dead. When did he die?

A. I disremembers, but he died at Mt. Vernon.

Q. At the time of his death he was still in the hospital for the insane at Mt. Vernon?

A. Yes, sir.

Q. I show you this paper marked Defendant's Exhibit B, which purports to be the commitment paper for one Lum Oakes, signed by Probate Judge of Perry County, Irby Pope, purporting to show that Lum Oakes was committed to Mt. Vernon, to the hospital for the insane, on the 18th day of July, 1940. And I will ask if Lum Oakes and Columbus Oakes are one and the same person?

A. Yes, sir, the same person. His name was Columbus Oakes, but they called him Lum Oakes.

Q. I see. Now, the first commission of Lum Oakes or Columbus Oakes, according to Defendant's Exhibit A, was on the 29th day of April, 1912. Is that what it says here (indicating on Exhibit A)?

A. Yes, sir, that's right.

Q. And he was after that time evidently released. Is that true?

A. That's right.

Q. You don't know when he was released, do you?

A. No, sir.

Q. But you know he was released, do you?

A. That's right.

Q. And according to Defendant's Exhibit B, Lum Oakes was committed—will you read that part (indicating on Exhibit B) of this thing I have here? Let me read it for you. He was committed, according to this commission paper, on the 18th day of July, 1940. Is that right?

A. Yes, sir, that's right.

Q. And that was one and the same person as Columbus Oakes?

A. Yes, sir, same person.

Q. Was he ever released from the hospital after he went down there in 1940?

A. One time he was, yes, sir.

[fol. 705] Q. He was released one time after 1940?

A. I don't know whether it was after 1940, but he was released one time.

Q. Now that was the first time, after he went down there in 1912? We know he was released?

A. Yes, sir.

Q. But he wasn't released after 1940, was he?

A. No, sir, he was not.

Q. And you say he is dead?

A. Yes, sir.

Q. And he died in the hospital for the insane at Mt. Vernon, Alabama?

A. Yes, sir.

Q. Were there any other persons in your family that to your knowledge were at some time declared insane?

A. Not to my knowing.

Q. Were you in Marion, Alabama, on or about April 24, 1953?

A. I was.

Q. How far do you live from this defendant?

A. About a mile or a little better.

Q. Did you see the defendant on that night?

A. No, sir, I did not.

Q. Do you recall what night it was?

A. No, sir.

Q. You don't know what night it was?

A. No, sir.

Q. Did he live with you?

A. He did not.

Attorney Hall: That's all.

Cross Examination.

By Solicitor Hare:

Q. Willie, how many brothers and sisters do you have?

A. I have four. Four sisters and one brother.

Q. Now, you say your mother was sent to Mt. Vernon?

A. Yes, sir.

Q. Do you know what she was sent there for, what kind of disease she had?

A. No, sir, I don't know what disease she had, but I know she was insane.

Q. She was insane?

A. Yes, sir, she was insane.

Q. And Columbus, your uncle, was sent down there?

A. Yes, sir.

Q. Do you know whether they had syphilitic paresis or not?

A. Beg pardon?

Q. Do you know whether they had syphilitic paresis or not?

Attorney Hall: If your Honor please, we object unless he is shown to know about syphilitic paresis. If he knows what syphilitic paresis is.

Solicitor Hare: Well, I am asking him what type of disease they had.

[fol. 706] The Court: If he knows.

Q. Do you know?

A. No, sir, I don't know.

Q. And you say that she was sent down there and died down there, and Columbus was sent down there twice.

A. Yes, sir.

Q. Now, Willie, do you recall when your son, William Earl Fikes, was arrested over here?

A. Yes, sir.

Q. About when was that?

A. I don't know the date.

Q. Do you know the month?

A. It was in May, I believe, wasn't it?

Q. In May? When did you hear that he had been arrested?

A. I heard it that Sunday night.

Q. That Sunday night. Was that the Sunday night after he had been arrested Saturday night or Sunday morning?

A. Yes, sir.

Q. Did you come over here and talk to him in the jail with Mr. Jack Townsend?

A. No, sir.

Q. Did you come over here with Mr. Horne that he worked for over there?

A. No, sir.

Q. Do you know whether Mr. Horne came over here to see him or not?

A. I don't know, no, sir.

Q. When did you first talk to William after he was arrested?

A. The first Sunday, I believe it was.



Q. The first Sunday after he was arrested?

A. Yes, sir.

Q. He had been arrested one week when you talked to him.

A. No, sir, it hadn't been a week.

Q. Not a week! It hadn't been a full week, had it?

A. No, sir.

Q. And when did you talk to him?

A. That Sunday.

Q. That Sunday. Where did you go to talk to him?

A. Kilby.

Q. Went to Kilby Prison?

A. Yes, sir.

Q. And you talked to him in Kilby Prison the first Sunday after he was arrested.

A. Yes, sir.

Solicitor Hare: That's all.

Redirect examination.

By Attorney Hall:

Q. Now, Willie, when did you say you first talked to your son, William Earl Fikes, after his arrest?

A. The first Sunday I went down there.

Q. When did you say he was arrested?

A. (No answer)

Q. When did you first learn of his arrest?

A. That Sunday night after he was arrested.

Q. Do you remember the date?

A. No, I don't remember the date.

[fol. 707] Q. When did you see him?

A. I saw him that next Sunday.

Q. Was that Sunday a week from the time you heard he was in jail?

A. Yes, sir.

Q. One week exactly?

A. Yes, sir, but in the meantime I went down there on Thursday and I did not see him.

Q. Assuming the day he was arrested was the 17th. day of May (indicating on large calendar held in front of witness), 1953, Sunday, then the day you saw him was Sunday the 24th. day of May?



A. Yes, sir. Sunday after he got arrested.

Q. Now, you had not seen him on the 23rd. day of May, had you?

A. No, sir.

Q. On the 23rd. day of May, you had not seen him?

A. No, sir. I went there Thursday, but I didn't see him then.

Q. Did you see him Thursday?

A. No, sir.

Q. On Saturday, the 23rd., did you see him?

A. No, sir.

Q. And on Sunday, the 24th., you saw him.

A. Yes.

Q. I see. Do you know whether or no he had seen a lawyer at that time or a lawyer had seen him?

A. I do not.

Q. Do you know whether or no a lawyer had tried to see him at that time?

A. Well, I don't know, at that time. I couldn't say at that time.

Q. You couldn't say. Do you know whether or no a lawyer tried to see him at any time while he was in Kilby Prison?

A. I heard he had.

Q. Who did you hear it from?

A. I disremember who it was, but I heard it.

Q. But you don't know it of your own knowledge, do you?

A. No, sir, I do not.

Attorney Hall: That's all.

Recross examination.

By Solicitor Hare:

Q. Willie, had you talked to any lawyer about going over there to see him?

A. No, sir, I did not.

Q. Had you authorized any lawyer to be over there and talk to him?

A. No, sir.

Q. Or to represent him?

A. No, sir.

Solicitor Hare: That's all.

[fol. 768] By the Court:

Q. Willie, you were duly sworn in this case yesterday morning, were you not?

A. Yes, sir.

Q. You raised your right hand and you were duly sworn?

A. Yes, sir.

Q. As I understand it, you heard about your boy's arrest on the Sunday night that he was arrested?

A. Yes, sir.

Q. Do you recall who told you that he was under arrest?

A. No, sir, I don't remember.

Q. And that you did visit him at Kilby Prison on the following Sunday.

A. Yes, sir.

Q. After he had been arrested on the preceding Sunday?

A. Yes, sir.

Q. And you are positive of that?

A. Yes, sir.

The Court: All right. That is all, you can step down.

---

IRENE FIKES, being duly sworn, testified as follows:

Direct examination.

By Attorney Hall:

Q. State your name, please.

A. Irene Fikes.

Q. Where do you live?

A. Marion, Alabama.

Q. Are you the mother of this defendant, William Earl Fikes?

A. Yes, sir.

Q. How many children do you have?

A. Three.

Q. Three children?

A. Yes, sir.

Q. And is this the youngest or the oldest?

A. The youngest.

Q. This is the youngest child.

A. Yes, sir.

Q. Have you lived in Perry County, Alabama, all of your life?

A. Yes, sir.

Q. All of your life.

A. Yes, sir.

Q. Did William Earl Fikes go to school in Perry County?

A. Yes, sir.

Q. How much schooling did he have over there?

A. About the third grade.

Q. I asked you how much schooling he had, and what was your answer, please?

A. Third grade.

Q. And he went to school over in Marion until he got to the third grade.

A. Yes, sir.

Q. Do you remember how old he was when he quit school?

[fols. 709-723] A. No, sir, I don't he was very young.

Q. Why did he quit?

A. Why did he quit?

Q. Yes.

A. Well he just quit. He wanted to work.

Q. How old was he at that time?

A. I guess he was about sixteen.

Q. When did he start school?

A. About eight years.

Q. He started to school when he was eight years old.

A. Yes, sir.

Q. And he quit when he was sixteen.

A. Yes, sir.

Q. And he had gotten to the third grade.

A. Yes, sir.

Attorney Hall: That's all.

Cross-examination.

By Solicitor Hare:

Q. Irene, you say he went to school when he was eight years old?

A. I think he was about eight.

Q. And he quit when he was sixteen.

A. Yes, sir.

Q. And you say he finished the third grade.

A. Yes, sir.

Q. Now, Irene, do you know Miss Terrell Whitman, the probation officer up there?

A. Yes, sir, I know her.

Q. And sometime back in the summer, didn't Miss Whitman come to you and talk to you about your boy, William Earl?

A. No, sir.

Q. She didn't talk to you?

A. No, sir.

Q. You don't remember talking to her at all? Do you know Miss Whitman?

A. Yes, sir, I know her.

Q. She didn't talk to you at any time back, this year?

A. No, sir.

Q. You are sure of that?

A. I can't remember she talking to me.

Q. Well, Irene, if you did talk to her, did you tell her that William Earl finished the sixth grade?

A. No, sir, I didn't.

Q. You didn't?

A. No, sir.

Solicitor Hare: That's all.

Redirect examination.

By Attorney Hall:

Q. Isn't it a fact that William Earl had to quit school because he just couldn't learn?

A. Yes, sir, he was always thick headed.

Q. I see. And he just couldn't learn and they couldn't get him out of that grade, so he had to quit school?

A. Yes, sir.

Attorney Hall: That's all.

[fol. 724] MRS. GLADYS CHAMBLISS, being duly sworn, testified as follows:

Direct examination.

By Solicitor Hare:

Q. What is your name?

A. Gladys Chambliss.

[fol. 725] Q. Where do you live?

A. Montgomery.

Q. Are you employed?

A. Yes.

Q. And were you employed in May of this year?

A. I was.

Q. Where were you working?

A. I was secretary to the warden of Kilby Prison, Montgomery, Alabama.

Q. How long have you been acting in that capacity?

A. For the past two and a half years.

Q. Do you do stenographic office work generally?

A. I do.

Q. And how long have you been employed as a stenographer?

A. Since 1940.

Q. Since 1940. Mrs. Chambliss, do you recall an occasion this year taking some testimony with reference to William Earl Fikes, the defendant in this case?

A. Yes, I do.

Q. Where were you at that time?

A. I was in my office at the front of Kilby Prison.

Q. Do you remember when that was?

A. It was in May on a Tuesday.

Q. A Tuesday in May. Do you recall the day of the month?

A. I believe it was the 26th.

Q. About the 26th. Now, who was present there in that office at that time?

A. The warden, Mr. Burford, Captain Baker, Mr. Reese, yourself, and seems like there was a lieutenant or somebody else.

Q. And where was William Earl Fikes?



A. He was sitting to the left of my desk.

Q. Sitting to the left of your desk.

A. Yes, sir.

Q. While William Earl Fikes was there, or at any time prior to that— First, let me ask you if a conversation was had with William Earl Fikes in your presence?

A. Yes, sir.

Q. At that time and just prior to that time, did anyone in your presence or hearing make any threats against him to get him to talk?

A. They sure didn't.

Q. Mrs. Chambliss, was any show of violence or force made against him to get him to talk?

A. No, sir.

Q. Were any threats or intimidation made against him to get him to talk?

A. No, sir.

Q. Was he cursed or abused in any way to get him to talk?

A. No, sir.

Q. Were any offers of reward or hopes of reward or immunities held out to him to get him to talk?

A. No, sir.

Q. And he did have a conversation in your presence and hearing?

A. Yes, sir.

Q. And during this conversation, Mrs. Chambliss, what did you do?

[fol. 726] A. I took down all that William Fikes said, the conversation between he and Captain Baker, mostly.

Q. Yes, ma'am. And how did you take that down?

A. In shorthand.

Q. In shorthand. And what did you do with those notes at that time?

A. I kept them until our fiscal year ended. Our fiscal year ends September 31, and the first of October I destroyed all of my notes in my note books.

Q. Well, at that time, what did you do with those notes?

A. I transcribed them.

Q. When did you transcribe them?

A. Well, the testimony, when he didn't want to tell me

anything else and Captain Baker was going to finish it up, I took my notes down to the Chief Clerk's office, and not having any paper I wrote on some of his paper, because my paper has "C.P. Burford, Warden" on it and his paper has the director's name on it. And I didn't have any carbon paper, so I only made one copy.

Q. Only made one copy. Now I will hand you this document, Plaintiff's Exhibit 1, and ask you to examine that, Mrs. Chambliss. (Hands Exhibit 1 to witness) How many pages in that document?

A. I think there're about six. (Counts pages) Five pages.

Q. Five pages.

A. Yes. I had forgotten.

Q. Mrs. Chambliss, who wrote this writing on those sheets, the typewriting?

A. I did.

Q. You did. And you wrote that on or about May 26th., in Kilby Prison?

A. In the afternoon. It was getting late.

Q. About how late?

A. Oh, I think about four-thirty or five.

Q. About four-thirty or five. Now, I'll ask you to look that over, Mrs. Chambliss. Is that a true and correct transcription of the conversation with William Earl Fikes, the defendant in this case, that you have heretofore testified to?

Attorney Hall: If your Honor please, we object to the witness answering that question in view of the fact that she has testified that she does not have her shorthand notes with her, and in view of the fact that she testified she had forgotten how many pages were in that document, and until a proper predicate is laid to show that she knows.

The Court: Over-rule the objection.

Attorney Hall: We take an exception, your Honor.

Q. You wrote that?

A. I did.

Q. I will ask you if that is a true and correct transcription [fol. 727] of a conversation had with William Earl Fikes that you have just testified to?

A. Yes, that is a true and correct transcription of the details that William Fikes gave to me.

Q. Yes, ma'am. Mrs. Chambliss, I'll ask you to look this over, and in some parts there are words typed over or stricken out—

Attorney Hall: (Interrupting) If your Honor please, we would like the right to examine her voir dire.

The Court: All right.

Attorney Hall: If your Honor please, we would like to examine her out of the presence of the jury.

The Court: Over-rule.

Attorney Hall: We take an exception, your Honor.

Cross-examination.

By Attorney Hall:

Q. Mrs. Chambliss, I believe you testified that you did take down whatever conversation that you heard on that Tuesday?

A. Yes, I did.

Q. In shorthand?

A. Yes.

7 Q. Mrs. Chambliss, do you frequently take down confessions?

A. No, I do not.

Q. Was this your first experience?

A. Yes, it was.

Q. Do you know of confessions having been taken at Kilby Prison?

A. Not in my office.

Q. Anywhere in Kilby Prison?

A. I do not know.

Q. This was the first time you have ever taken a confession at Kilby Prison?

A. It surely was.

Q. Now, Mrs. Chambliss, is there anything, any sign or indication on any of these pages?

A. Yes, J. M. McCullough, Jr. Director, name is on the back of all stationery.

Q. What would that indicate, Mrs. Chambliss?

A. Well, it would indicate it is our stationery.

Q. Is there anything on the pages to indicate who typed it?

A. No, but William signed it in my presence, and Captain Baker numbered the pages because I had not done so.

Q. As secretary, you usually take dictation in shorthand?

A. Yes.

Q. And you transcribe your shorthand notes into long-hand?

A. Yes.

Q. And you do that on the typewriter?

A. Yes.

Q. Do you usually indicate who wrote those letters with some symbols?

A. No.

[fol. 728] Q. At no time? As a secretary?

A. No.

Q. And that is your usual procedure?

A. Yes.

Q. Mrs. Chambliss, do you recall whether or no this defendant made a narrative statement in your presence?

A. I don't understand you.

Q. Did he tell you and those who were in your presence a continuous story?

A. No, he didn't.

Q. How was it done?

A. He was asked questions, and then he went into details about some of them.

Q. Was he questioned by one or several individuals?

A. Well, I think Captain Baker did most of the talking.

Q. And I believe you did testify that there is nothing on any of these pages to indicate you typed them?

A. Nothing, other than my word. He signed in my presence, whatever I put on there.

Q. Is there anything on any one of these pages to indicate when typed?

A. I wouldn't think so.

Q. Is there anything on any of these pages to indicate when the alleged statement was made?

The Court: Is there any date at all?

Q. Any date at all.

A. No, sir, but what was said in the conversation.



Q. Is there anything at all on any of these pages to indicate what day or what month or what year this alleged conversation or statement was made?

A. You mean like writing a letter? It is not dated up at the top.

Q. Anywhere to indicate—

The Court: I don't think the witness understands your question.

Q. What I am trying to get at is, is there any date written on these papers at all which would tell any person who was not present—

Solicitor Hare: If your Honor please, this is not voir dire examination, this is cross examination. I object to cross-examination on voir dire.

Attorney Hall: This witness is being offered to testify to something she wrote on these pages.

The Court: You are on voir dire now.

Attorney Hall: Do I understand that you sustain the objection?

The Court: In that particular question, yes.

Attorney Hall: We take an exception, sir. That's all.

[fol. 729] Redirect examination.

By Solicitor Hare:

Q. Mrs. Chambers, as I understand it, you testified that you typed these pages?

A. Yes, sir.

Q. And they were typed on or about May 26—

A. (Interrupting) Yes, sir.

Q. —in the warden's office in Kilby Prison?

A. Yes, sir, and there are a good many typographical errors on there and that was due to the fact that I was using someone else's machine and not the one I was accustomed to, and I was excited, too, when I wrote it.

Q. Yes, ma'am.

A. And I apologize for that and for the things typed over, and everything like that.

Q. Look on page two, there is a word stricken out or x-ed out. Who x-ed that out?



A. I did.

Q. Now, I will ask you to look for any other typographical errors or changes. Who made those?

A. I did all of them. There is one in here where Captain Baker said "mad" and I wrote "made".

Q. When were any deletions or corrections made?

A. When I transcribed my notes.

Q. And were they made before the defendant in this case, William Earl Fikes, signed his name?

A. Yes, they were made before he signed.

Q. And did he sign his name to each and every one of these sheets of paper?

A. Yes, he did.

Q. And was it done in your presence?

A. Yes, sir, on my desk.

Q. On your desk. Mrs. Chambliss, do you know, when you finished the transcription, was that paper shown to William Earl Fikes?

A. It was read to him in the presence of all in the office at the time.

Q. Yes, ma'am. And did he sign it before it was read to him or after it was read to him?

A. He signed the paper after it was read to him.

Solicitor Hare: That is all.

Recross examination.

By Attorney Hall:

Q. Had you seen this defendant before that Tuesday?

A. Yes, I saw him when he came into Kilby Prison the first time.

Q. Were you present during any time when this defendant was being questioned by anybody at the time he was brought in?

A. No, that was the only time.

Q. The only time you were present was Tuesday, May 26th?

A. Yes, that's right.

[fol. 730] Q. So you do not know, as a matter of fact, whether anyone made threats against this defendant previous to that time.

A. Not in my presence and not in that room. And I heard he was a real good worker.

Attorney Hall: If the Court please, we object to that statement and ask that it be stricken.

The Court: Yes. That last statement is out and not for your consideration, gentlemen.

Q. Mrs. Chambliss, as a matter of fact, how long was the defendant in your presence on Tuesday, May 26th?

A. Well, from the length of the conversation and the time he come in, I imagine about one-thirty, and probably left about four-thirty—or five.

Q. And he was in your presence and you were in his presence, and in the presence of those gentlemen, during all of that time?

A. No, it took awhile to transcribe those notes, so I would say he was in my presence about two and a half hours.

Q. Now, were you there when they first began questioning him on Tuesday?

A. Yes, I was.

Q. Was the defendant in your presence the previous Saturday?

A. No, he was not.

Q. Did you understand on Tuesday, when you first saw him on Tuesday that he had already confessed?

A. I don't know whether he had or not.

Q. Did you understand that?

A. No.

Q. You had not read any newspaper account to the effect that he had confessed?

A. I very seldom read cases like that.

Q. And you had heard no one say that he had?

A. No, I hadn't.

Q. Had you at that time heard a tape recording of a purported confession?

A. No, I hadn't.

Q. We ask you whether or no your name was on these pages. Will you examine these pages, please, ma'am, for the record, to the effect that they are five loose pages clipped together by one Gem clip? They are five?

A. Yes, they are five.

Q. And what was holding them together when handed to you?

A. A Gem clip.

Q. A Gem clip and nothing else holding them together. Now, Mrs. Chambliss, did you make any mark on those pages to indicate which was first and which second, and so on?

A. No, I did not. Captain Baker wrote Page 1, 2 and 3, in the presence of all of us before William Earl Fikes signed it.

Q. Have you had any conversation with anyone relative to that alleged confession, today or any previous time?

A. No, I have not.

[fol. 731] Q. No one has talked to you?

A. No.

Q. No one has said anything to you? The State's attorneys or Mr. Gayle or Mr. Baker, at any time about that confession?

A. I talked to them, but they didn't say anything about it.

Q. You didn't talk to them about that confession today?

A. No.

Q. Yesterday?

A. I didn't see them yesterday.

Q. At no time since you transcribed it and wrote it up?

A. No.

Q. Mrs. Chambliss, I will ask you to examine those five separate sheets of paper purporting to be the confession of this defendant, and tell the Court if your name is written on any of those pages.

A. My name is not written on any of these pages because I did not put it on there.

Q. I will ask you, Mrs. Chambliss, to tell this Court and this jury if there are any symbols or anything else to identify you as the typist?

A. There is none, because if you didn't take my word that this is my typewriting I don't think you could tell it.

Attorney Hall: If your Honor please, we object to the voluntary portion of the witness' answer and move that it be stricken.

The Court: The voluntary portion of the answer is out and not for your consideration, gentlemen.

Attorney Hall: And we move you sir, at this time to declare a mistrial.

The Court: Over-rule your motion.

Attorney Hall: We take an exception, sir.

Q. Mrs. Chambliss, I believe you testified that you took that testimony down in shorthand notes in your office. Is that right, ma'am?

A. That's right.

Q. And that is where the defendant was being questioned at that time?

A. That's right.

Q. Do you have a separate office, or is your office in with Mr. Burford?

A. His office adjoins mine. Mine is larger, and you come through my office going to Mr. Burford's office.

Q. And the defendant was actually in your office at that time?

A. That's right.

Q. Where did you do the transcribing?

A. I went down in the chief clerk's office.

Q. Was this defendant present at the time you transcribed those notes?

A. No, he was still in my office.

Q. Were either of the witnesses whose names are on that?

A. They were both there.

[fol. 732] Q. With you?

A. No, in my office. I was alone when I transcribed my notes.

Q. Neither of the witnesses were present when you transcribed your notes.

A. No.

Q. Mrs. Chambliss, is there anything there to indicate who asked the questions of this defendant at that time?

A. Well, the two witnesses that signed the paper, Captain Baker and Solicitor Hare.

Q. Is that indicated on those sheets?

A. Yes.

Q. How is that indicated?

A. Would you like to read it to the jury?

The Court: Just answer his questions.

The Witness: I put Solicitor when he asked a question and Baker when he asked a question and Burford when he asked.

Q. Now, for Solicitor Hare, what did you write?

A. What did I write?

Q. Yes, what is on that paper to indicate who asked the question?

A. Solicitor.

Q. Just "Solicitor"?

A. When I took this down I didn't know he was Solicitor Hare.

Q. Now, Mrs. Chambliss, please, we are trying to find out who examined the witness, according to that paper which purports to be a confession.

A. According to this paper, the solicitor and the captain of the police department of Selma did.

Q. And the paper only says "Solicitor" and "Baker", is that right?

A. That's right.

Q. Now, immediately after each question, is it indicated who makes any further statement?

A. There was only one person questioned and that was William Earl Fikes, and I didn't write his name on the transcription.

Q. There is nothing there to indicate who made those purported answers, is there?

A. No.

Q. There are only the names "Solicitor" and "Baker".

A. That's right.

Q. And I asked you once before if there is any date on those papers.

A. There is no date on those papers at the top, as if you were writing a letter.

Q. Is there one at the end to show when it was signed?

A. No.

Q. Or one to show when they witnessed it?

A. No.

Q. So, Mrs. Chambliss, so far as that paper is concerned,



it may have been written any where, any time, any place—in so far as the paper is concerned?

[fol. 733] A. (No answer)

The Court: Can you answer the question, Mrs. Chambliss? In so far as the paper is concerned, does it reveal any date or any place where it was signed?

The Witness: Nothing, only five pages, and things like that.

The Court: That is embodied in the questions and answers.

The Witness: That's right.

Q. In the questions and answers, Mrs. Chambliss, is any date of any week or any year indicated?

A. No.

Q. So that nowhere on that paper is there a date.

A. No.

---

C. P. BURFORD, being duly sworn, testified as follows:

Direct examination.

By Solicitor Hare:

Q. What is your name?

A. C. P. Burford.

Q. Where do you live, Mr. Burford?

A. Montgomery, Alabama.

Q. What is your business?

A. I am in prison work.

Q. Is that with the Department of Corrections and Institutions of the State of Alabama?

A. Yes, sir.

Q. Mr. Burford, back in May of this year, what was your particular business?

A. I was warden at Kilby Prison.

Q. Where is your office in Kilby Prison?

A. First door on the left when you come in the front door of the prison.

Q. And do you have a secretary?

A. Yes, sir.

Q. Who was your secretary at that time?

A. Mrs. Chambliss.

Q. Mr. Burford, do you recall an occasion when this defendant was in your office?

A. Yes, sir.

Q. Do you recall when that was?

A. Twenty-sixth of May, I believe, on Tuesday.

[fol. 734] Q. And where had this defendant, William Earl Fikes, been before he came to your office? Do you know?

A. He had been back in our segregation unit.

Q. In your segregation unit. And who was in your office at that time when he came in there?

A. Mrs. Chambliss was in there, and you and Mr. Baker, and Mr. Reese, and another fellow.

Q. And were any persons there in your office armed?

A. No, sir, we do not allow arms inside of the prison.

Q. Are the guards inside of the prison armed?

A. No, sir.

Q. At that time and at that place, was a conversation had in your presence with William Earl Fikes, the defendant in this case?

A. Yes, sir.

Q. Now, just at that time and just prior to that conversation was any show of violence or threats or intimidation made against this defendant to get him to talk?

A. No, sir.

Q. Were any rewards or hopes of reward or immunity or promises of immunity held out to him to get him to talk?

A. No, sir.

Q. Were there any threats or intimidations made against him?

A. No.

Q. And you say that a conversation was had with him?

A. Yes, sir.

Q. While he was talking, Mr. Burford, do you know whether any notes were being taken of what he said?

A. Yes, sir, Mrs. Chambliss was taking notes of what was being said.

Q. Was that fact known to William Earl Fikes at that time?

A. Yes.

Q. And do you know what Mrs. Chambliss did with those notes?

A. She took them back to another office and transcribed them.

Q. And later on, did you see any typewritten papers in your office?

A. Yes, sir.

Q. I'll hand you State's Exhibit No. 1, and ask you if you have ever seen that before.

A. Yes, sir, that looks like the ones—that is the ones that was brought up here.

Q. Yes, sir. And what, if anything, was done as to the writing on these papers, as to this defendant?

A. Well, he signed them.

Q. He signed them?

A. Yes, sir.

Q. Did he sign them in your presence?

A. Yes, sir.

Q. Were these papers at any time read to him?

A. Yes, sir.

Q. Were they read to him prior to the time he signed them or after he signed them?

A. Before he signed them.

Q. Before he signed them. And he signed each and every one of these papers in your presence?

A. Yes, sir.

Q. Do you know William Earl Fikes?

A. Yes, sir.

[fol. 735] Q. Has he been in your custody at any time?

A. Yes, sir.

Q. You were warden of Kilby Prison for most of the time he was in your custody?

A. Yes, sir.

Q. Mr. Burford, I will ask you if this defendant has been denied his meals or water or mistreated or threatened in any way or abused while in your custody?

A. No, sir, he has not.

# Cross-examination.

By Attorney Hall:

Q. Mr. Burford, I believe you testified that this defendant was first placed in your custody on May 18, 1953, is that correct, sir?

A. I didn't testify to that, and I don't know just when it was.

Q. You don't know when it was?

A. I don't know exactly the date, but it was about that time.

Q. You don't recall the day of the week?

A. No.

Q. But it was on or about May 18, 1953?

A. Yes, sir.

Q. Do you recall why he was placed there?

A. As a safe keeper.

Q. As a safe keeper, on whose orders, sir?

A. The officials of this county.

Q. Of this county?

A. Yes. I don't remember just who called up, whether it was Captain Baker or whether it was the Judge, or just who called up.

Q. Do you know whether he was charged with any crime at that time, sir?

A. I don't know.

Q. You don't know whether he was a prisoner of the City of Selma or of Dallas County at that time, do you, sir?

A. I don't know.

Q. Do you know Captain Baker, sir?

A. Yes, I do now. I didn't at that time.

Q. You did not at that time?

A. No.

Q. Now, Mr. Burford, I believe you testified that William was placed in segregation. What does that mean?

A. Just a place where he does not mingle with the other prisoners. He has a comfortable bed and all conveniences.

Q. Do you mean it is an extremely comfortable cell?

A. It is quite comfortable.

Q. Is it different from the average cell?

A. Only one bed in it and the others have more.

[fol. 736] Q. And the prisoners are placed together in the other cells?

A. That's right.

Q. Is that what is commonly called solitary confinement?

A. No.

Q. Was he allowed to mingle with the other prisoners at all?

A. No.

Q. Why was he placed in that cell alone?

A. Well, that's where we would place any safe keeper that comes in. He isn't our prisoner. We don't want him talking to the other prisoners. It is not punishment. We are just keeping him, holding him for someone else. Just a safe place to keep him.

Q. Now, Mr. Burford, while he was at your prison, do you know whether or no his father attempted to see him on one or several occasions?

A. I remember one day he wanted to see him and we allowed him to visit.

Q. Had he been there previously?

A. If he had, it hadn't been called to my attention.

Q. Do you know whether or no any lawyer had attempted to see him while he was there?

A. There was one lawyer that came to see him that we would not let see him.

Q. When was that, sir?

A. When?

Q. Yes, sir.

A. It was one Saturday, but I don't remember the date.

Q. Was that before that alleged confession?

A. Yes, I believe it was. I couldn't say that for sure. But that lawyer refused to identify himself as a lawyer, and admitted he had not been hired on the case, and that's the reason we wouldn't admit him.

Q. Did he tell you what his name was?

A. Yes, but he wouldn't show us any identification.

Q. Did he tell you he was a lawyer?

A. Yes.

Q. Isn't it a fact that he was Mr. John McGee, a practicing attorney of Montgomery, Alabama?

A. Yes, sir.



Q. And he told you that on that occasion?

A. Yes, sir.

Q. But you refused to let him see this defendant.

A. Yes.

Q. Why?

A. Well, there were two or three reasons. One was that he refused to identify himself as an attorney. And as a safe keeper, he is not our prisoner, so we never feel like we can let anyone see him without getting an OK from the man who has charge of him. If a man does identify himself as a lawyer, we will do it, we will go that far.

Q. Now, he did identify himself orally as a lawyer?

A. Orally, yes.

Q. Had you previously met Mr. McGee?

A. No, sir.

Q. You had known of him previously?

A. That's right.

Q. But he did tell you he was a practicing attorney with [fol. 737] offices in the City of Montgomery?

A. Yes, but he didn't say where his office was.

Q. Now, Mr. Burford, did you subsequent to that time or previous to that time allow any lawyer to see this defendant while he was in your custody?

A. I don't remember right now—yes, I think he had seen a lawyer by that time.

Q. By which time?

A. Before McGee came along, I believe he had.

Q. Which lawyer was that?

A. Some lawyer from over here. I believe two lawyers from over here, that had been appointed to take his case.

Q. And you think that was before Mr. McGee came over?

A. I am not positive.

Q. And you say that Mr. McGee—did he or not come before this alleged confession?

A. I am not sure of that.

Q. So it may have been before this confession?

A. Could have been.

Q. I will ask you, sir, if on Tuesday, May 26th., when you were in the company of Mr. Hare and Mr. Reese and Mrs. Chambliss and Lt. Ware and Captain Baker, questioning this defendant in your office, sir, you were aware of the fact

that according to newspaper reports he had already confessed? You knew that?

A. Yes.

Q. Now, do you know when he is supposed to have confessed, sir?

A. No.

Attorney Hall: I will ask your Honor to identify this newspaper.

(Court Reporter marks for identification newspaper, copy of the Selma Times-Journal dated Sunday morning, May 24, 1953, as Defendant's Exhibit E)

Q. Mr. Burford, will you examine this, please, and tell us what it is that is marked Defendant's Exhibit E (handing newspaper, Exhibit E, to witness)?

A. Selma Times-Journal.

Q. Is that a newspaper, sir?

A. Yes, sir.

Q. And it is the Selma Times-Journal for what date, sir?

A. Sunday morning, May 24.

Q. What year?

A. 1953.

Q. Thank you, sir. Now, how many sections does this paper consist of, sir?

A. Two, I think. Two.

Q. And of how many pages, sir?

A. Thirty-two pages.

Attorney Hall: Now, if it please the Court, we are going to ask that this paper be placed in evidence. Not the entire paper, but just one article.

Solicitor Hare: We object, your Honor, on the grounds [fol. 738] there has been no proper predicate laid.

Attorney Hall: The Judge can take judicial knowledge—

The Court: You are just offering the article?

Attorney Hall: Yes, sir.

The Court: Over-rule.)

Solicitor Hare: Now, may it please the Court, he is offering that in evidence and we have had no opportunity to examine it and have no knowledge of what it contains.

(Attorney Hall hands said-newspaper to Solicitor Hare for his inspection) !

Solicitor Hare: Is he putting it in evidence or just marked for identification? We object to it's being admitted in evidence.

The Court: If it is not connected up, I will rule it out. Temporarily, it is admitted in evidence.

(Above described newspaper article temporarily accepted in evidence as Defendant's Exhibit E)

#### DEFENDANT'S EXHIBIT E:

### NEGRO HELD AT PRISON CONFESSES RAPE GUILT AND OTHER RAIDS HERE

MAJOR CRIMES IN WAVE OF TERRORISM SOLVED AS PROWLER  
'TALKS' TO CAPT. BAKER

By Arthur Capell

A Negro rapist scare that held Selma in a grip of terror for the past 12 weeks apparently was ended Saturday when William Fikes, 27-year-old Marion service station attendant, confessed at Kilby Prison that he raped the wife of an air force sergeant on May 18 and that he has entered a number of other homes here during this time.

Earlier this week the Folsom parolee had admitted to an attempted rape of the mayor's daughter, and entry into the C. C. Binford home recently, and to one attack and another residence entry in Selma during August of 1948.

The Perry County Negro, who was picked up on suspicion last Saturday night, broke down at six p. m. yesterday and made his complete confession to Capt. Wilson Baker after a nine-hour questioning session.

#### Confession of Negro

Baker quoted the prisoner as saying that he raped the sergeant's wife at her First Avenue residence on the night of March 18; that he entered the residence of Dr. Harlan Hollingsworth and fought with him on the night of May 11th; and that he attempted to rape 66-year-old Mrs. Lily

Little at her home on Mechanic street the night of May 15.

Tape recordings of the confessions also revealed that [fol: 739] Fikes told the police captain of entering the homes of Tom Bearden and Mrs. Emma Godwin, both of whom reside on Range street, prior to the night he attacked Mrs. Stinson. And that during another night after he had raped the young white matron, he entered the home of Mrs. R. A. Brady on Range street.

The police captain said the Negro further admitted to numerous other window peeping incidents in Selma during trips that he made here at least once each week for the past three months from the nearby Perry County seat town.

These confessions cleared the police records of every definite entry or attempted entry made here during the recent prowler series.

The joint efforts of Mr. and Mrs. Jake Youngblood and a Parrish High senior, Roland Harris, led to the capture of Fikes about midnight last Saturday. He was seen prowling in several alleys that enter Broad Street, arousing the suspicion of the alert citizens who contributed to his apprehension.

Baker obtained his first confessions from the Negro Monday afternoon. Shortly afterwards he was carried to Kilby for safe keeping until his trial comes up during the next criminal session of Circuit Court.

Since that time police investigations both here and in Marion have been in progress as officers worked to tie all loose ends in the case together.

Saturday, Baker was accompanied to Kilby by Circuit Solicitor James Hare, Police Lt. Willie Ware, who has also been active in the case; and by the sergeant and his wife, who confronted the prisoner during the day to aid in the interrogation.

(End of Exhibit E)

Cross-examination.

By Attorney Hall, continued:

Q. Mr. Burford, now, did you testify that you had heard previously that this defendant had confessed?

A. Yes.

Q. Had you read that in a newspaper?

A. I don't know. I don't think so.

Q. You don't recall whether you had read that in the newspaper or not.

A. No.

Q. Will you examine this paper, this newspaper which is marked Defendant's Exhibit E and which purports to be the Selma Times-Journal for Sunday morning, May 24, 1953; and I direct your attention to this article on the front page thereof, which is a feature article carrying the by-line of Mr. Arthur Capell; and further direct your attention, sir, to a paragraph of that particular article and ask you to read it, sir.

Solicitor Hare: We object to that.

Attorney Hall: We didn't ask him to read it aloud.

The Court: Read it to yourself.

(Witness silently reads specified paragraph of Exhibit E)

Q. Had you seen that previously, sir?

A. No.

Q. Did you know the facts alleged there, at the time of this confession?

A. Did I know what?

Q. Did you know the facts alleged there at the time this alleged confession was written?

A. Yes.

Q. You knew those facts, did you?

[fols. 740-743] A. Roughly. I knew he had confessed.

Q. And you knew he had been questioned extensively, did you not, sir?

A. Yes.

Q. Were you present at all times when this defendant was being questioned while at Kilby Prison?

A. No. The only time I was present was when he made this confession that was written down.

Q. So the only time was on Tuesday, May 26?

A. Yes.

Q. And at that time you knew that he already had confessed on Saturday, the 23rd. Is that right, sir?

A. Yes.



Q. And you knew that by virtue of having read it in the paper?

A. No.

Q. But you knew it.

A. Yes.

Q. So, sir, you do not know—I withdraw that. Assuming that it is true that he had allegedly confessed on Saturday, you were not present at the time that he confessed, were you?

A. No.

Q. So that you do not know whether any threats or violence were used or not.

A. All I know about is that day.

Q. According to your own knowledge, and according to what you had been told, he had already confessed on Saturday, is that right?

A. Yes, that's right.

Q. And Tuesday was the only time you were in this defendant's presence.

A. Yes, sir.

Q. Now, Mr. Burford, isn't it true that one other person came into that office during the time this defendant was being questioned?

A. I don't remember it.

Q. Is it not true, sir, that a colored prisoner came in there sometime or other?

A. No.

Q. Mr. Burford, were you present when Mrs. Chambliss transcribed her notes?

A. Yes.

Q. You were present?

A. Oh, not when she transcribed them. When she took them down I was.

Q. You were present when she took them down?

A. I was.

Q. Do you read shorthand, sir?

A. No, sir.

Q. Would you know whether or no a shorthand character according to Gregg system would be a true and correct indication of what had been said and done?

A. No, I have no idea.

Q. Do you know whether either Lt. Ware or Captain Baker was present at the time these notes were transcribed?

A. No, sir, none of them. I don't think any of them could have been where they were transcribed.

[fol. 744] Redirect examination.

By Solicitor Hare:

Q. Mr. Burford, do you permit lawyers who have not been retained by the prisoner or his family to solicit employment within the confines of Kilby Prison?

A. No, sir.

Q. I will ask you if this lawyer who came on that occasion you testified to, did he tell you he had been retained by the family of this defendant?

A. Said he had not.

Q. Or by the defendant himself?

A. Said he had not.

Recross examination.

By Attorney Hall:

Q. You testified previously in this Court with reference to the visit of that lawyer?

[fol. 745] A. I don't remember.

Q. But you did testify?

A. Yes.

Q. Isn't it true, sir, that you testified that the only explanation he made was that he wanted to see him because he didn't think he was guilty?

Solicitor Hare: We object, your Honor.

The Court: You can ask him as to his statement on the previous trial. Go ahead.

The Witness: That's right.

Q. You did make that statement?

A. That's right.

Q. In answer to the question asking what explanation Mr. McGee made, is that right, sir?

A. I believe so.

Q. Did you at that time make any other explanation or do any other testifying with reference to that question?

A. I don't remember it.

Attorney Hall: That's all.

Redirect examination.

By Solicitor Hare:

Q. Has the opportunity to confer with counsel ever been denied to this defendant?

A. No, sir.

Q. Have the previous two attorneys for William Earl Fikes seen him?

A. They have.

Q. Prior to the time this statement was taken on May 26, had this defendant, William Earl Fikes, had an opportunity to confer with his father?

A. Yes, sir.

Solicitor Hare: That is all.

Recross examination.

By Attorney Hall:

Q. On what date did the defendant's counsel see him at Kilby Prison? Present counsel.

A. I don't know the date.

Q. Do you remember whether it was in the month of September, 1953, sir?

A. I don't think it would have been in the month of September, because this happened in May.

Q. That is true. Are you saying that the defendant's present attorneys saw this defendant previous to September, 1953?

A. Oh, I don't think so, not the present attorneys. I don't know when you fellows came.

[fols. 746-795] Q. Were you present on that date?

A. I remember your coming in. I think so. They called from the tower and said there was two colored attorneys and I said send them in.

Q. Did you have a conversation with us at that time, sir, with reference to our authority to see our client?

A. The man at the gate said you identified yourselves as lawyers and convinced him.

Q. Do you know how we identified ourselves?

A. He was satisfied you were lawyers, and that was good enough for me.

Q. Was this man at the gate convinced Mr. McGee was a lawyer?

A. No.

Q. Mr. McGee told him he was a lawyer?

A. I don't know.

Q. Did you see Mr. McGee yourself?

A. I sure did.

Q. And Mr. McGee got past the gate?

A. He got past the tower and came up to see me.

Q. So he actually got inside the prison.

A. Yes, in my office.

Q. And he talked to you with reference to seeing that prisoner?

A. That's right.

Q. And you did not let him see him.

A. That's right.

Q. And you did not inquire into defendant's present attorneys' authority to see the prisoner?

A. Any more than the man out there said they were lawyers.

Q. You yourself, did not inquire.

A. No.

Q. Made no inquiry at all.

A. No.

Q. And that was after this defendant had been indicted for this alleged offense?

A. I don't know whether he was indicted. He was our prisoner then. When he was our prisoner we can let anybody see him that we want to.

[fols. 796-802]

#### COLLOQUY

The Court: Anything further, gentlemen?

Attorney Hall: No, sir.

The Court: Gentlemen of the jury, you may take the

exhibits which have been offered in evidence and retire to the jury room to begin your deliberations.

(The jury retires to the jury room, taking said exhibits with them)

(Later: Bailiff notifies the Court that the jury is ready to return to the court room)

The Court: Let the record show that the defendant and his counsel and the solicitors for the State of Alabama are all in court.

The Court: (Addressing audience in court room) When this jury comes in, I don't want any demonstration of any nature or description. I don't want any voice raised, any hand clapping, or any other outward demonstration made. If such occurs, you officers of the law will immediately bring forward any individuals who violate my instructions.

The Court: Bring the jury in, please.

(Jury returns to the court room and takes the jury box)

The Court: Have you gentlemen reached a verdict?

Foreman of the Jury: We have, your Honor.

The Court: Will you read it, please?

Foreman of the Jury: (Reading verdict) "We, the jury, find the defendant guilty of burglary in the first degree as charged in the indictment, and fix his punishment at death. Carroll E. Jackson, Foreman."

The Court: I would like to take this opportunity to thank you gentlemen for the cooperation which you have displayed. You have rendered the County a service for which you are due credit. I want everyone in the court room to remain seated until this jury leaves the court room.

(Jury leaves the court room, and then the spectators leave)

#### VERDICT OF THE JURY

We, the jury, find the defendant guilty of burglary in the first degree, as charged in the indictment, and fix his punishment at death.

Carroll E. Jackson, Foreman.



## ASSIGNMENT OF ERRORS

1. The Court erred in refusing to grant defendant's motion to quash the indictment (Motion T. 490).

2. The Court erred in refusing to grant defendant's motion to quash venire (Motion T. 26).

3. The Court erred in refusing to order a lunacy hearing for defendant (Motion T. 490).

4. The Court erred in not striking the testimony of William D. Power's, Jr. on defendant's motion (Motion T. 26).

5. The Court erred in allowing the jury, over the objection of defendant, to remain in the court-room during the voir dire examination of the witness, J. Wilson Baker, Captain of the Police Department of the City of Selma. (Trial T. 47, 285)

6. The Court erred in refusing to declare a mistrial on motion of counsel for the defendant, after the witness, J. Wilson Baker, Captain of Police Department of Selma, testified in the presence of the jury about an alleged confession by the defendant, before a proper or sufficient predicate had been laid. (Trial Tr. P. 58)

7. The Court erred in overruling defendant's objection to the introduction into evidence of State's Exhibit, purporting to be a tape recording of defendant's alleged confession. (Trial Tr. P. 58)

8. The Court erred in refusing to allow the defendant to take the witness stand and testify, on voir dire examination of Captain J. Wilson Baker as to the voluntary nature of the alleged confession supposedly taken on a tape recorder and which was played in the presence of the jury, over the defendant's objections. (Trial Tr. 57)

9. The Court erred in allowing an alleged confession taken down on a tape recorder to be played in the presence of the jury, over the defendant's objections. (Trial Tr. P. 58)

10. The Court erred in overruling defendant's motion to exclude the jury during the qualifying examination of the witness, J. Wilson Baker, relative to an alleged written confession, before the same had been offered or received into evidence. (Trial Tr. 79)

11. The Court erred in admitting into evidence an alleged typewritten confession, over defendant's objection. (Trial Tr. 82)

[fols. 804-805] 12. The Court erred in allowing Mrs. Deloris Stinson to testify to an alleged rape for which defendant was not on trial, over the objection of counsel for defendant. (Trial Tr. pages 91-93)

13. The Court erred in allowing the testimony of James Winfred Brown to go to the jury, over defendant's objections. (Trial Tr. pages 95, 96, 97, 98, 99)

14. The Court erred in denying defendant's motion for a new trial. (Motion is attached under separate—to the Supreme Court of the State of Alabama.)

15. The Court erred in refusing to give the charge requested by the defendant, said charge being in writing, numbered 6 and reading as follows:

6. The Court charges the jury that good character itself is part of the evidence in this case; and if the jury upon a consideration of all the evidence have a reasonable doubt growing out of any part of the evidence, the jury will give the defendant the benefit of such doubt and acquit him.

16. The Court erred in refusing to give the charge requested by the defendant, said charge being in writing, numbered 12 and reading as follows:

12. I charge you, Gentlemen of the jury, that you must find defendant not guilty.

17. The Court erred in refusing to give the charge requested by the defendant, said charge being in writing, numbered 14, and reading as follows:

14. I charge you, Gentlemen of the jury, that if you do not believe the evidence in the case, you cannot find the defendant guilty.

18. The Court erred in refusing to give the charge requested, said charge being in writing, numbered 31, and reading as follows:

31. The Court charges the jury that under your oath you are bound to consider the evidence as to the char-

acter of the defendant along with all the other evidence in this case, and the character evidence alone may, in your sound judgment, be sufficient to generate a reasonable doubt of the defendant's guilt of either charge presented in the indictment in this case, and if such reasonable doubt has been generated by the evidence after considering it all, you should give the defendant the benefit of that doubt and acquit the defendant.

(S.) Peter A. Hall, Orzell Billingsley, Attorneys for Defendant.

[fol. 806]

[File endorsement omitted]

IN SUPREME COURT OF ALABAMA

THE STATE OF ALABAMA, JUDICIAL DEPARTMENT,

SPRING TERM 1955

2 Div. 335.

WILLIAM EARL FIKES

v.

STATE OF ALABAMA

Appeal from Dallas Circuit Court.

OPINION—May 12, 1955

Per Curiam:

Defendant was convicted of first degree burglary with intent to ravish Jean Heinz Rockwell in an apartment dwelling which she occupied, and was sentenced to death.—Section 85, Title 14, Code of 1940.

The evidence was that on Friday night about "10:20" of April 24, 1953, Mrs. Rockwell was asleep in her bedroom. She had two babies, one of whom was in an adjoining bedroom and the younger in her room. Her husband was not at home. When she awakened around "10:15" a negro man was sitting on her as she lay in bed. She knew he was

a negro but did not see his face as it was covered. She could not identify defendant as that person. He had a knife belonging to her which he had gotten from the kitchen. He told her he was going to kill her. She began struggling [fol. 807] to get off the bed and with him holding on to her she managed to get into the hall (where there was a light) adjoining her room. She went all the way down the hall and into the living room in the front of her apartment. There he fell over a stool and fell on Mrs. Rockwell. She was screaming and he threatening to kill her with the knife at her throat, and he told her "to straighten out". She grabbed the knife and got it out of his hand. He jumped up and ran down the hall and out through the kitchen and back door. She fell up against the back door and locked it. It was locked when she went to bed but was open when he ran out of it. The kitchen was in the middle of the apartment between the dining room and bedrooms. There was an outside entrance to the kitchen with a screen and wooden door. The screen to the window was also open and the window up. There were holes in the screen over by the latches, but these holes were not there before he entered the apartment.

The indictment properly set out the charge, and the record shows that the requirements of law were complied with in respect to it. It was signed by the solicitor and endorsed by the foreman of the grand jury, with the caption required by law, and filed in open court in Dallas County on November 12, 1953. Defendant was arraigned, pleaded not guilty and not guilty by reason of insanity, and was represented on arraignment and throughout the trial by attorneys. The court set the date of trial for December 7, 1953, and drew a special venire as required by law. No question is raised in respect to such matters.

On November 19, 1953 defendant filed a motion in writing to quash the indictment, alleging in substance that he is a member of the negro race, a citizen of Alabama and of the United States; that negroes are and were systematically excluded from grand juries organized in Dallas County solely because of their race or color; and are discriminated against in the organization of grand juries in



said country solely because of their race or color in that no members of said race, or a mere token number, are included on the jury roll or have their names placed in the jury box, or if their names are so placed they are not drawn for service on any grand jury, or if they are drawn they are not listed, thereby denying to defendant due process [fol. 808] and equal protection of the laws guaranteed to him by the Constitution and laws of Alabama and the Fourteenth Amendment of the United States Constitution.

That no negro served on the grand jury which returned the aforesaid indictment against defendant in this cause; nor has any negro served on a Dallas County grand jury in modern times. That there exists a system, practice or custom in drawing or organizing grand juries to serve in Dallas County designed to totally exclude negroes from service on such grand juries, or to discriminate against them solely on account of their race or color contrary to the Constitution and the laws of Alabama and the Fourteenth Amendment to the Constitution of the United States.

That when the indictment was returned the census of the United States showed that the male population of Dallas County over the age of twenty-one numbered 13,996, of which 6040 were whites, and that the negroes over twenty-one years number 7,956. That a great majority of said negro males are native born citizens of Dallas County, householder and freeholders, generally reputed to be honest and intelligent men, esteemed in the community for their integrity and good character and are not habitual drunkards nor afflicted with disease or physical weakness such as would disqualify them to discharge the duties of grand jurors, and otherwise possess all of the qualifications and none of the disqualifications set out in the Constitution and laws of Alabama and of the United States which govern the situation and service of grand jurors: yet the jury commission failed or refused to place on the jury roll and in the jury box the names of such negro male citizens of Dallas County, and at that time the jury roll of said county contained less than two percent of the names of the total number of negro male citizens-eligible under the Constitution and laws of Alabama and of the United States for jury duty in said county. Those details are further elaborated.



The facts thus alleged were verified by the affidavit of defendant.

On the same day another motion in writing was filed by defendant to quash the indictment, alleging that it was based solely upon an alleged confession of guilt which was extorted and illegally obtained from defendant by and through force and violence or threats of force and violence, coercion, torture and brutality by officers and detectives of [fol. 809] the City of Selma and of Dallas County, Alabama, while acting in their official capacity and he was deprived of due process and equal protection of the law guaranteed by the Constitution and laws of Alabama and the Fourteenth Amendment to the Constitution of the United States. That prior to the return of the indictment defendant was arrested without warrant on May 16, 1953, was never taken before a magistrate but was held in the city jail of Dallas County for several days without a formal charge and without being permitted to confer with counsel, his parents or friends, and was subsequently taken to Kilby prison in Montgomery where he has remained until the present time, and where he was not allowed to confer with counsel, his parents or friends until he had been indicted in this cause and after he had been subjected to days of uninterrupted questioning by officers of the City of Selma and of Dallas County, and subjected to violence or threats of violence, coercion and force or threats of force, and an alleged confession was extorted from him, which is the sole basis of said indictment, and he was thereby deprived of his rights to due process and equal protection guaranteed by the Constitution and laws of Alabama and the Fourteenth Amendment to the Constitution of the United States. Defendant also moved to quash the venire or array drawn to try him and assigned the same ground in substance as those assigned in the first named motion to quash the indictment as amended *supra*.

It appeared from the evidence submitted on the motion that on June 2, 1953 this defendant has been indicted in several cases of a similar nature, including the one now on trial. That motion to quash them had been made and acted on October 9, 1953, resulting in their being quashed on substantially the grounds set up in the first motion herein

set forth. The evidence on the instant motion showed that there was a jury roll dated "1942 to 1951" and another from "1951 to 1953". The grand jury which returned the indictment of June 1953 was drawn from the box based on the roll of "1951 to 1953"; although there were some cards in the box of persons whose names were not on the roll. The jury commissioners had not always been careful to put all the names on the jury roll; and had put some cards of names in the box not on the roll. On that particular jury roll there were shown to be eight negroes. Those indictments were quashed on October 9, 1953. The jury commission [fol. 810] went about revising the roll and refilling the box on about the first of October (may be the 5th). They made investigation from available sources, such as the city and telephone directories, the list of registered voters, and by personal inquiry and personal contact. They communicated with negro leaders and others and used their own personal knowledge as to the fitness of persons subject to jury service—males over twenty-one years and not over sixty-five years. They were confronted with the statute, section 3, Title 30, as amended, pocket part Code, which is as follows:

"The following persons are exempt from jury duty, unless by their own consent: judges of the several courts; attorneys at law during the time they practice their profession; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of the courts and county commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actually engaged in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any boat plying the waters of this state; passenger bus driver-operators, and driver-operators of motor-vehicles hauling freight for hire under the supervision of the Alabama public service commission; railroad engineers, locomotive firemen, conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as

such; regularly licensed embalmers while actually engaged in their profession; radio broadcasting engineers and announcers when engaged in the regular performance of their duties; the superintendents, physicians and all regular employees of the Bryce hospital in Tuscaloosa county and the Searcy hospital in Mobile county; officers and enlisted men of the national guard and naval militia of Alabama, during their term of service; and convict and prison guards while engaged in the discharge of their duties as such."

The jury commission adopted a policy, not always observed, not to include those who are exempted by statute. When a person was known to be exempt, he was usually left off the list. They spent some twelve or more days working on this new revised roll, and completed it October 17, 1953. It is their duty under section 20, Title 30, as amended July 7, 1945 (pocket part Code) to meet annually between the first of August and the twentieth of December, and to make in a well bound book a roll containing the name of every male citizen living in the county who possesses the qualifications prescribed by statute and who is not exempt by law from jury service. The commission is required to have written on plain white cards the name, occupation, place of residence and place of business of each person whose name is placed on the jury roll. Those cards are required to be placed in a metal box provided with a lock and two keys and kept in a safe or vault in the probate office. One of the keys is kept by the president of the jury [fol. 811] commission and one by a judge of the county.

Section 21, Title 30, as amended July 1, 1943 (pocket part Code) prescribes the qualifications of persons to be placed on the jury roll, as follows:

"The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or who is an habitual drunkard, or who being afflicted with a permanent disease or physical weakness is unfit

to discharge the duties of a juror, or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder his name may be placed on the jury roll and in the jury box. No person over the age of sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so."

Section 29, Title 30 authorizes the court to tax against the clerk of the commission or its members the cost of summoning for jury service any person on the roll who does not possess the qualifications required by law.

Section 30, Title 30, provides the manner of drawing a venire for service. That is, that the judge is required to draw from the box without selection the cards with names sufficient for the purpose. He shall draw not less than fifty for service to supply a grand jury and petit juries for the week. They are summoned to court by the clerk. By section 38, Title 30, the judge in open court hears and acts on excuses. The cards with the names of those left are placed in a hat or box and the judge then draws out of the hat or box eighteen cards for those to serve on the grand jury. From those remaining he draws cards for the different panels for petit jury service.

By section 63, Title 30, in all cases charging a capital felony the venire must consist not only of those drawn for regular petit jury service for the week but an additional number fixed by the judge so that the venire will consist of not less than fifty nor more than one hundred persons. A list of them is furnished defendant at least one entire day before the day set for trial. On the day set for trial (under section 64, Title 30) the court must inquire into and pass on the qualifications of all persons who appear in court in response to summons for service. By section 52, Title 30, before the veniremen are accepted defendant may examine [fol.812] them as to their qualifications, interest and bias. And by section 55, Title 30, either party may challenge any such person for one of the causes there provided. By section 65, Title 30, the number of veniremen left, from which



the trial jury is taken in a capital case, cannot be less than thirty. If less, it is recruited from the jury box. When the venire is finally purged and a sufficient number left, a list is made of them. From that list the State strikes one and defendant two until only twelve are left to serve as the trial jury. They are then sworn as such. So that every precaution is prescribed by law to obtain a grand jury of intelligent and competent men, and a petit jury to include also those free from bias, interest or formed opinion.

We think it would be difficult to formulate a more perfect method for obtaining jurymen to serve on grand and petit juries. The first step is to get only qualified men on the jury roll. That is those having the qualifications specified by law and not exempt. The names of all such men in the county should be placed on the roll and in the box every year. That is a very difficult and delicate job for the commissioners. They are appointed by the governor (except in some specified localities). There is no legal reason for quashing an indictment or venire simply because the jury commission did not put the name of every qualified person on the roll or in the jury box, in the absence of fraud (or a denial of constitutional rights).—Section 46, Title 30, Code; *Bell v. Terry*, 213 Ala. 160, 104 So. 336; *Wimbush v. State*, 237 Ala. 153 (11); 186 So. 145. The commissioners have a very delicate task to perform which involves sound judgment and practical discretion. Generally it is not revisable by the courts. But they must act in good faith and not omit a segment of people who are qualified to serve without a fair representation. And that applies to racial differences. There are shown to be racial distinctions in Dallas County between the white and negro population. There are more negroes than whites living in the county. The figures set out in the motion in that respect are shown to be substantially correct. The commission put into the box and on the roll in October 1953 fifteen hundred names of which two hundred and fifty to three hundred were negroes, and from which the venire was drawn which furnished the grand jury and petit juries here involved. There was nothing on the roll or cards which indicated their race. There had been only a small number of negroes on previous jury rolls. Probably they had been systematically left off



[fol. 813] such rolls on account of race. Very few negroes were ever drawn on a venire. When one did appear he was either excused at his request or stricken by a party to the cause in selecting the trial jury. This was recognized by the court in quashing the indictments returned June 2, 1953. It appears that most of the criminal cases in the county have been against negroes—said to be ninety percent of them; and invariably negro jurymen were stricken by defendants on trial for that reason alone. This they had a right to do. Negroes never sat on a grand jury nor tried a case on a petit jury. There were seven persons known to be negroes on the venire from which the grand jury was drawn which returned the instant indictment, and twelve on the venire from which the petit juries were organized for December 7th for the trial of defendant in this case. The majority of the negroes are shown to be tenant farmers. Some own their land. Some of them who are otherwise qualified are professional men, such as dentists, doctors, school teachers, embalmers and druggists, all of whom are exempt. The most intelligent and competent as a rule are exempt. The evidence shows that a large majority of the negroes are ignorant, with little or no education and low moral character, and there is much venereal disease among them and a large percentage of illegitimacy.

The evidence does not show that some negroes as well as whites who were competent to serve and not exempt were not put on the roll. It may be negroes were systematically omitted prior to the roll made in October 1953, but that was not true in making up that particular roll.

The indictment and trial here involved are controlled by the roll then made. The prior habit of the commissioners in respect to negroes on jury rolls can only serve to shed light on their conduct in making up the last jury roll. But that is not sufficient to overcome the direct positive evidence showing an effort in good faith to have the negro race fairly represented on the jury roll by negroes who are qualified and not exempt after indictments have been quashed for such previous failure. It is not appropriate to say that they are entitled to be represented in the same proportion as the whites are represented unless their qualifications are in the same proportion. That does not appear.

The comparison without that is not an accurate guide for a determination of the question. We think the trial court [fol. 814] properly overruled the motion to quash the indictment and the motion to quash the venire for use on the trial of this cause because, we think, the evidence fails to show that the jury commission systematically omitted qualified and not exempt negroes from the jury roll because they were negroes or discriminated against them on that account, and thereby deprived defendant of due process or the equal protection of the law. We think, therefore, there was no reversible error in that respect.

As indicated above, the defendant also moved to quash the indictment on the ground, in substance, that the only evidence before the grand jury in respect to the charge made by the instant indictment was that of an alleged confession which was obtained from defendant by and through force and violence or threats of force and violence, coercion, torture and brutality by officers and detectives of Selma and of Dallas County in their official capacity.

The only evidence as to the nature of the testimony before the grand jury which returned the indictment on which the instant trial was had was that of the foreman of the grand jury. He testified with reference to cases entered on the grand jury docket. Cases numbered 43, 44, 45, 46, 47 and 48 were cases of first degree burglary in which this defendant was stated as the person so charged. In case No. 43 the witnesses before the grand jury were Mrs. Jean Heinz Rockwell and Capt. J. W. Baker. An indictment was returned in case No. 43, in which Mrs. Jean Heinz Rockwell is named as the person occupying and lodging in the house burglarized at the time. That is the indictment on which defendant was tried in the instant case. In respect to each of the other cases charged against this defendant, the evidence is that two witnesses testified before the grand jury. One was the name of a woman and the other that of Capt. Baker. The evidence is that as to each case separately those persons appeared before the grand jury and gave evidence which was considered by them. There was no offer to prove the nature or effect of their testimony. The only evidence offered by the movant was that of witnesses, including Capt. Baker in an attempt to show that

he extracted by improper means a confession from defendant, and therefore presumptively that is all that he testified to before the grand jury. There was no effort to show what Mrs. Rockwell knew and may have testified before them. In the first place, there was absolutely no evidence [fol. 815] that Capt. Baker improperly extorted a confession out of defendant.

We recognize the requirement of section 86, Title 30, for the use of legal evidence before a grand jury. Under that statute the general rule is that when competent witnesses are examined by the grand jury or the grand jury had before them legal documentary evidence, no inquiry into the sufficiency of the evidence is indulged.—*Sparrenberger's case*, 53 Ala. 481.

Referring to that rule in *Washington v. State*, 63 Ala. 189, where the grand jury returned an indictment for burglary, the Court said that it could not inquire into the contention that, while there was proof before the grand jury that a burglary was committed, no legal evidence was given that accused was the guilty offender.

That is the exact contention here made. There was testimony given by Mrs. Rockwell. She had a legal right to testify. What was the nature of that testimony could not be inquired into. According to those cases, if Mrs. Rockwell had been the only witness this motion should have been overruled. We cannot inquire into the nature of Capt. Baker's testimony and no attempt was made to do so. If legal evidence is given, we may add, an indictment is not subject to be quashed because there was illegal evidence also given. This rule is not abridged by *Allen v. State*, 162 Ala. 74, 50 So. 279. In that case reference was made to section 7776, Code of 1907 (section 489, Title 7, Code of 1940) which prohibits an indictment (or conviction) for seduction on the uncorroborated testimony of the woman. It was held that the *Sparrenberger case*, *supra*, did not prohibit evidence that there was before the grand jury no corroborating evidence as specifically required by that statute. It can be shown on a motion to quash an indictment that there was before the grand jury no competent witness or legal documentary evidence, but not its insufficiency or that there was also illegal evidence (except as

required by statute applicable to that situation.—*Ex parte State, ex rel. Attorney General (in re Gore v. State)*, 217 Ala. 68, 114 So. 794; *Mackey v. State*, 186 Ala. 23, 65 So. 330; *Clark v. State*, 240 Ala. 65 (20-21), 197 So. 23. The motion to quash was properly overruled.

A jury was organized to try the cause. The defendant pleaded not guilty and not guilty by reason of insanity. During the progress of the trial objections to evidence were overruled and exceptions noted. We will not undertake to analyze each of them separately, but will discuss those which [fol. 816] are important. We have examined the entire record and given consideration to all questions shown, whether discussed or not.

The first one we wish to discuss is the admissibility of a tape recording offered and received in evidence. Since it contained a confession by defendant, it is necessary also to inquire as to whether such confession was voluntary, or induced by force, coercion, threats, personal injuries or tiresome examination sufficient to destroy his volition, or hope of any sort held out to him. Of course any confession so obtained violates the constitutional rights of a person charged with the commission of a crime and cannot be used as evidence against him in a criminal case.—*Chambers v. Florida*, 309 U. S. 227, 60 S. Ct. 472. It is different from the right to use evidence obtained by an unreasonable search and seizure of such person; for evidence so obtained may be used against him on trial in a state court for violating a state law without a violation of the Fourteenth Amendment.—*Wolf v. People*, 338 U. S. 25, 69 S. Ct. 1359; *Irvine v. People*, 347 U. S. 128, 74 S. Ct. 381.

We have often held that Alabama law and procedure do not prohibit the use of testimony so obtained on trial for a state crime in state court.—*Oldham v. State*, 259 Ala. 507, 67 So. 2d 55; *Ingram v. State*, 252 Ala. 497, 42 So. 2d 36.

It seems to be a well settled principle that a magnetic tape recording may be used as evidence when it is of matters otherwise legal, and provided the proper safeguards are shown to have been used so as to protect the recording against error or spoilation. The speakers as recorded should be properly identified and adequate safeguards taken to insure authenticity.—*William Claud Wright v. State*, MS



(Alabama Court of Appeals); *Goldman v. United States*, 316 U. S. 129, 62 S. Ct. 993; *United States v. Schanrman*, 150 Fed. 2d 941 (6); *State v. Perkins*, 198 S. W. 2d (Mo.) 704, 168 A. L. R. 920, annotation 927; *Ray v. State*, 57 So. 2d (Miss.) 469; *Williams v. State*, 226 Pac. 2d (Okla.) 989.

The evidence in this case justifies the use of the recording as evidence of matter which is legal and relevant otherwise. But objection was made that the recording was evidence of a confession by defendant, and that it did not sufficiently appear from the evidence that the confession was voluntary. [fol. 817] The evidence was without conflict that it was voluntary. The authorities sustain our view that questioning a suspect in custody of the law is not prohibited by common law or the Constitution (nor by statute, we may add), and a confession so obtained is not for that reason alone rendered inadmissible.—*Phillips v. State*, 248 Ala. 510, 28 So. 2d 542. In this case the evidence showed without conflict that the officers did not intimidate appellant in any way. They were not armed when he made the recorded statement. He was in prison under protection against possible attack by others. But there was not shown to be threats of violence by the public or unusual excitement. He was not abused, nor questioned at such length and under such conditions as to break his resistance, but he gave details which were corroborative of that given by the State's chief witness. It is for the trial judge to determine whether the evidence shows that the confession was voluntary, and for the jury to give it such weight as they think proper. The decision of the trial court will not be disturbed on appeal unless it appears to be contrary to the great weight of the evidence.—*Reeves v. State*, 260 Ala. 66, 68 So. 2d 14; *Dennison v. State*, 259 Ala. 424, 66 So. 2d 552; *Myhand v. State* 259 Ala. 415, 66 So. 544; *Fewell v. State*, 259 Ala. 401, 66 So. 2d 771.

The evidence here without conflict supports the finding of the trial court.

But appellant contends that he was denied the right to controvert the State's evidence in that respect. Before the court made a ruling on the admissibility of the alleged confession defendant's counsel offered "to put this defendant on the stand for the purpose of refuting certain allegations



by the state with reference to the voluntary nature of what purports to be certain extra-judicial admissions and for no other purpose". The court declined to agree with defendant's counsel that his appearance as a witness could be limited to that inquiry.

Defendant had the legal right before the confession was admitted to introduce evidence of legal matter to refute that of the State tending to show that the confession was voluntary.—*People v. State*, 256 Ala. 612, 56 So. 2d 665; *Vernon v. State*, 239 Ala. 593, 196 So. 96; *Lockett v. State*, 218 Ala. 40 (8), 117 So. 457.

In making this offer the defendant's counsel did not inform the court just what facts he expected to prove by the witness, except his conclusion that they would "refute certain allegations of the State" with reference to the voluntary nature of defendant's confession. We have long since held, notwithstanding section 445, Title 7, Code, that we will not reverse for such a refusal by the trial court.—*Flowers v. Graves*, 220 Ala. 445, 125 So. 659; *Alaga Coach Co. v. McCarroll*, 227 Ala. 686, 151 So. 834; *Strickling v. Whiteside*, 242 Ala. 29, 4 So. 2d 416.

Of course it is the privilege of a defendant in a criminal case not to testify, but he may elect to do so.—Section 6, Constitution of Alabama.

At the time this offer was made the trial was proceeding; the jury had been selected and sworn, and the issues stated to them. Defendant had pleaded not guilty and not guilty by reason of insanity. All evidence tending to prove either of those issues was open to both parties. The State was offering a confession and had made a prima facie showing of its admissibility. The corpus delicti had been shown. If defendant saw fit or elected to testify as to that question, it was as to an issue then being tried. He would thereby subject himself on cross examination to be questioned as to any relevant matter pertaining to his guilt or innocence or sanity. If he proposed to testify to facts showing that the confession was unduly influenced, he certainly ought to respond to questions as to his guilt in fact and to any matter relevant thereto. He cannot restrict the nature of the relevant testimony he proposes to give.—*Kelly v. State*, 160 Ala. 48, 49 So. 535; *Carpenter v. State*,

193 Ala. 51, 69 So. 531; *Gast v. State*, 232 Ala. 307, 167 So. 554; *Brown v. State*, 243 Ala. 529, 10 So. 2d 855. Therefore, for two reasons the trial court cannot be put in error on account of such proposal.

There was also introduced in evidence a written confession signed by defendant while in Kilby. The confession was taken down by a stenographer, written up by her, read to defendant and signed by him. It was shown that this was voluntary on the part of defendant. The Court allowed it as evidence without error.

The evidence showed that on or about March 18th, preceding April 24, 1953, Mrs. Stenson was in bed asleep at about 10:00 o'clock P. M. at her home in Selma when she was awakened: defendant was on top of her with a knife at her throat and threatened to kill her if she screamed, and that he had forcible intercourse with her. Mrs. Binford, on another occasion, found defendant in her bathroom in her home in Selma on May 1, 1953 at twenty minutes to eleven [fol. 819] at night. He was there for about seven minutes and went out of the small bathroom window. No evidence of other details was offered.

The State offered this evidence solely on the question of intent and identity of defendant and his motive on the occasion then on trial, and the court instructed the jury that such evidence was received for that purpose only. Objection was overruled and defendant excepted.

We have pointed out "that evidence which goes no further than showing character generally or disposition to commit crime is, of course, inadmissible, but if such evidence goes further than showing character and bears probatively on the intent with which the act was committed, it is none the less admissible though it might also tend to discredit the defendant's character."—*McKenzie v. State*, 250 Ala. 178, 33 So. 2d 488; *Noble v. State*, 253 Ala. 519, 45 So. 2d 857; *Mason v. State*, 259 Ala. 438, 65 So. 2d 557.

Those two incidents mentioned above both have such peculiar qualities of a similar nature or pattern as to point to defendant as the guilty agent in respect to the offense here on trial, and to show that his intent was to ravish as alleged in the indictment.—*Johnson v. State*, 242 Ala. 278, 5 So. 632; *Robinson v. State*, 243 Ala. 684, 11 So. 2d 732;

*Daniels v. State*, 243 Ala. 675, 11 So. 2d 756; *Brasher v. State*, 249 Ala. 96, 30 So. 2d 31; *McKenzie v. State*, *supra*; *Noble v. State*, *supra*; *Mason v. State*, *supra*.

We have examined with care the entire record and the exceptions noted as well as the legality of all the evidence offered against defendant regardless of whether exception was noted or not, and whether or not assigned as error.—Title 15, section 382 (10), Pocket Part Code. Errors were unnecessarily assigned.—Title 15, section 389, Code. We find no error of the trial court which was injurious to the defendant.—Section 389, *supra*.

The oral charge of the court and those given as requested by the defendant correctly and intelligently covered every aspect of the law involved, including the burden of proof, the elements of the offense, the plea of insanity, and character evidence. This completely covered the few charges which the court refused.

We find no reversible error, and the judgment should be affirmed.

The foregoing opinion was prepared by Foster, Supernumerary Justice of this Court, while serving on it at the [fol. 820] request of the Chief Justice under authority of Title 13, section 32, Code, and was adopted by the Court as its opinion.

Affirmed.

Livingston, C. J., Simpson, Stakely and Goodwyn, JJ., concur.

Lawson and Merrill, JJ., concur specially as indicated.

Mayfield, J., concurs in result.

LAWSON, JUSTICE (concurring specially).

I cannot agree with that part of the opinion holding that the defendant was not entitled to testify as to the facts and circumstances concerning an alleged confession or confessions which the State introduced under the circumstances shown in the court's opinion without thereby subjecting himself to cross-examination as to matters pertaining to his guilt or innocence, sanity or insanity.

While I am not willing to say that the trial court should be reversed in this particular case because of its ruling on

this point; I wish to record my position concerning that ruling.

Merrill, J., concurs in the foregoing views.

[fol. 821] IN THE SUPREME COURT OF ALABAMA

WILLIAM EARL FIKES

VS.

THE STATE OF ALABAMA

JUDGMENT OF AFFIRMANCE—May 12, 1955

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court, is considered that in the record and proceedings of the Circuit Court there is no error.

It is therefore considered, ordered, and adjudged that the judgment of the Circuit Court be and the same is hereby in all things affirmed.

The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoner, William Earl Fikes, having expired pending this appeal, it is now ordered that Friday, July 1st, 1955, be and the same is hereby fixed as the date for the execution of the Defendant, William Earl Fikes.

It is further ordered that the Sheriff of Dallas County, Alabama, deliver the Defendant, William Earl Fikes, to the Warden of Kilby Prison at Montgomery, in Montgomery County, Alabama, and that the said Warden at Kilby Prison in Montgomery County, Alabama execute the judgment and sentence of the law on Friday, July 1st, 1955, [fol. 822] on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the body of the said William Earl Fikes until he is dead, and in so doing he will follow the rules prescribed by the Statutes.

It is also considered, ordered, and adjudged that the appellant, William Earl Fikes, pay the costs of appeal of .



this Court and of the Circuit Court, for which costs let execution issue accordingly.

---

[fols. 823-825] IN THE SUPREME COURT OF ALABAMA

(Title omitted)

MOTION FOR REHEARING—May 25, 1955

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Comes now William Earl Fikes, Appellant in the above styled cause, and moves this Honorable Court to grant unto him a rehearing in said cause, and to reverse, revise and hold for naught its judgment rendered on to-wit: May 12, 1955, affirming the judgment of the Circuit Court of Dallas County, Alabama, and to enter an order reversing said judgment.

Submitted herewith is a brief and argument in support of said motion.

(S.) Peter A. Hall, Orzell Billingsley, Jr., Attorneys for Appellant.

Certificate of service (omitted in printing).

---

[fols. 826-832] IN THE SUPREME COURT OF ALABAMA

[Title omitted]

ORDER DENYING REHEARING—June 23, 1955

It is ordered that the application for rehearing filed by the appellant in this cause on May 25, 1955, after being duly examined and considered by the Court, be and the same is hereby denied and overruled. (No opinion written on rehearing.)



[fols. 833-834] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF  
CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 20th, 1955.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 14th day of September, 1955.

[fol. 835] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1955

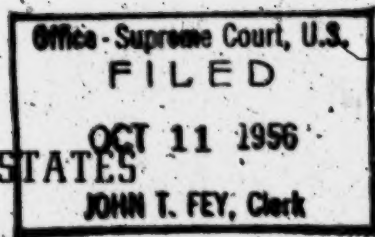
No. 378 Misc.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA  
PAUPERIS AND PETITION FOR WRIT OF CERTIORARI—March  
26, 1956

On petition for writ of Certiorari to the Supreme Court of the State of Alabama:

On consideration of the motion for leave to proceed herein in *forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in *forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is transferred to the appellate docket as No. 801.

LIBRARY  
SUPREME COURT, U.S.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

**No. 53**

WILLIAM EARL FIKES,

*Petitioner,*

*v.*

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

**BRIEF FOR THE PETITIONER**

PETER A. HALL,  
ORZELL BILLINGSLEY,  
1630 Fourth Avenue, North,  
Birmingham, Alabama,

JACK GREENBERG,  
107 West 43rd Street,  
New York 36, New York,  
Counsel for Petitioner.

RALPH J. TEMPLE,  
Of Counsel.

## TABLE OF CONTENTS

	Page
Opinion Below .....	1
Jurisdiction .....	1
Questions Presented .....	2
Statement .....	3
Argument:	
I. A. Due Process of Law Was Denied Petitioner, an Ignorant, Mentally Deficient Negro When Confessions Were Exacted from Him While He Was Persistently Questioned for Ten Days, on a Capital Charge at Kilby State Penitentiary Where He Was Kept Incommunicado "Segregated" and in "Protective Custody" on an "Open Charge of Investigation" Following Illegal Arrest .....	12
B. Petitioner Was Denied Due Process of Law When He was Forbidden to Testify During the State's Case and on Voir Dire to Determine Admissibility of the "Confessions", Concerning the Fact That They Had Been Coerced .....	15
II. Petitioner Was Denied Rights Guaranteed by the Fourteenth Amendment When Convicted Following Indictment by a Grand Jury in a County Where No Negro Has Ever Sat on a Grand Jury; Where Negroes were Included Solely Because of Race on the Panel From Which Was Chosen the Jury that Indicted Him; and Where Jurors Were Selected on the Basis of Personal Acquaintance with the Jury Commissioners .....	18
Conclusion .....	21

## TABLE OF CASES

	Page
<i>Adamson v. California</i> , 332 U.S. 46 (1947)	16
<i>Ashcraft v. Tennessee</i> , 322 U.S. 143, 152, 173	13, 14
<i>Avery v. Georgia</i> , 345 U.S. 519	20
<i>Cassell v. Texas</i> , 339 U.S. 282	18
<i>Chambers v. Florida</i> , 309 U.S. 227, 237, 241	13, 14
<i>Gallegos v. Nebraska</i> , 342 U.S. 55, 67	13
<i>Haley v. Ohio</i> , 332 U.S. 596	13
<i>Harris v. South Carolina</i> , 338 U.S. 68, 70	13, 14
<i>Johnson v. Pennsylvania</i> , 365 Pa. 303, rev. 340 U.S. 881 (1950)	14
<i>Malinski v. New York</i> , 324 U.S. 401, 412, 417	14
<i>McNabb v. U.S.</i> , 318 U.S. 332, 342, fn. 7	14
<i>People v. Trybus</i> , 219 N.Y. 18, 113 N.E. 538 (1916)	16
<i>Phillips v. State</i> , 248 Ala. 510, 28 So. 2d 542	12
<i>State v. Ashdown</i> , — Utah — 296 P2d 726, 729 (1956)	16
<i>State v. Bouse</i> , 199 Or. 676, 701, 264 P2d 800, 811 (1953)	16
<i>State v. Johnson</i> , 226 La. 30, 43, 74 So. 2d 402, 407 (1954)	16
<i>State v. Jones</i> , — S.C. —, 91 S.E. 2d 1, 4 (1956)	16
<i>State v. Thomas</i> , 208 La. 548, 555, 23 So. 2d 212 (1945)	16, 17
<i>Stein v. New York</i> , 346 U.S. 156, 187	14, 16
<i>Summerville v. State</i> , 207 Miss. 54, 70, 41 So. 2d 377, 382 (1949)	16
<i>Turner v. Pennsylvania</i> , 338 U.S. 62 (1949)	14
<i>Twining v. New Jersey</i> , 211 U.S. 78 (1908)	16
<i>Ward v. Texas</i> , 316 U.S. 547, 555	13, 14
<i>Witt v. U. S.</i> , 196 F2d 285 (C.A. 9th, 1952)	16

## STATUTES

28 U. S. C. 1257(3)	2
---------------------	---

## OTHER AUTHORITIES

BADER, "Coerced Confessions and the Due Process Clause" 15 <i>Brooklyn L. Rev.</i> 51, 70 (1948)	15
--	----

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1956**

---

**No. 53**

---

**WILLIAM EARL FIKES,**

*Petitioner,*

*v.*

**STATE OF ALABAMA**

---

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA**

---

**BRIEF FOR THE PETITIONER**

---

**Opinion Below**

The opinion of the Supreme Court of Alabama is reported at 81 So. 2d 303.

**Jurisdiction**

The judgment of the Supreme Court of Alabama was entered on May 12, 1955. Petition for rehearing was denied June 23, 1955. On September 14, 1955, by order of Mr. Justice Black, the time within which to file a petition for writ of certiorari was extended to and including November 20, 1955. The petition and motion for leave to proceed *in forma pauperis* were granted on March 26, 1956. The record was received by petitioner on September 11, 1956.



The jurisdiction of this Court rests on 28 U. S. C. 1257(3), petitioner having asserted rights, privileges and immunities conferred by the Constitution and statutes of the United States.

### Questions Presented

#### I

##### A

Whether sentence to death of petitioner solely on the basis of two alleged confessions exacted during ten days of incarceration while held on an "open charge of investigation" in the State Penitentiary, during which time he was without advice of counsel, friends or family and was incessantly questioned by police, denied due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

##### B

Whether under these circumstances due process was denied when petitioner offered to testify on *voir dire*, during the State's case, solely for the purpose of showing that the confessions were not voluntary and the Court held that petitioner would be required to respond to all questions concerning his guilt or innocence.

#### II

Whether petitioner was denied rights guaranteed by the Fourteenth Amendment when indicted in a county where Negroes are more than 50% of the population and no Negro has ever served on a grand jury; and where the panel of 1,750 persons selected immediately preceding petitioner's indictment contained approximately 250 Negroes placed thereon specifically because of their race; and where a substantial number of exempt white persons were called for jury duty, but exempt Negroes were not.

## Statement

### *Events Preceding Petitioner's Arrest*

Petitioner was convicted of the crime of burglary in the first degree (with intent to rape) and sentenced to death therefor in the Circuit Court of Dallas County, Alabama, on December 10, 1953 (R. 112). The judgment was affirmed by the Supreme Court of Alabama (R. 353). Petition for writ of certiorari and motion for leave to proceed *in forma pauperis* were granted by this Court on March 26, 1956. (100 L. ed. Adv. p. 408).

During early 1953, a number of crimes were committed in the City of Selma, Alabama, involving rape, house breaking and burglary. On April 24, 1953, an intruder entered the home of Mrs. Jean Heinz Rockwell, daughter of the city's mayor (R. 181). Mrs. Rockwell awoke to find the burglar sitting on her (R. 183) holding a knife at her throat (R. 186). A violent struggle followed which carried Mrs. Rockwell and her assailant more than forty feet through the apartment (R. 185), and ended by Mrs. Rockwell seizing the knife (R. 186) and routing him from the premises. However, she was at no time able to identify him, even though the bedroom, living room and hall were all illuminated (R. 185), because "a towel [was] draped over his head" (R. 186).

The Captain of the Selma Police Department affirmed that the Police Department of the City of Selma was "under unusual pressure" to apprehend the perpetrator of these offenses (R. 244).

### *Petitioner's Arrest*

About a month later, a few minutes after midnight on Sunday morning, May 17, a civilian (not a member of the police force) apprehended petitioner who was walking through an alley of the City of Selma (R. 269); petitioner

was soon turned over to the police who took him to the Selma police station (R. 268).

Petitioner is a 27 year old Negro who left school at the end of the third grade when he was 16 years of age (R. 307). There was uncontradicted testimony by two psychiatrists employed by the Veterans Administration and a Veterans Administration physician specializing in psychiatry, that petitioner was seriously mentally ill (R. 282-298). They had examined petitioner and concluded that he was suffering from the disease of schizophrenia (R. 285, 290, 295). Petitioner's mother testified that he had always been "thick-headed" (R. 308).

Petitioner was held "on an open charge of investigation" (R. 194).

The Captain of Selma's police testified that on the day following petitioner's arrest a warrant was issued for him (R. 195), but not recorded as is customary when arrests are made in the city (R. 222). At no time was a charge entered against petitioner on the Recorder's docket of the City of Selma (R. 196), the procedure where arrests are made in the city (R. 222).<sup>1</sup>

### *Petitioner's "Protective Custody"*

Not long after his arrest defendant spoke to his employer (R. 205) and to the Sheriff of Perry County, Marion, Alabama. But immediately thereafter the Selma police made several trips with petitioner (R. 244) back and forth to Kilby State Penitentiary, more than fifty miles from Selma, and deposited him there (R. 244). There, the Kilby Warden

---

<sup>1</sup> Numbered warrants were issued for all arrests made in the city (R. 222). Petitioner's was seemingly one of the cases about which the chief of police was "not just particularly clear" (R. 222), in which sometimes numbered warrants are not issued and no record is made on the Recorder's docket.

stated, "as a safekeeper, he is not our prisoner, so we never feel like we can let anyone see him without getting an OK from the man who has charge of him" (R. 325). An apparent exception might be made for "a man [who] identifies himself as a lawyer . . ." (R. 325). But, solely because he was in the custody of Kilby a member of the bar who came to see petitioner "because he didn't think he was guilty" (R. 331) was refused access to him prior to his confession. Under identical circumstances a lawyer was permitted to see petitioner subsequent to his confession.<sup>2</sup>

Defendant was taken to Kilby not because threats had been made against him by individuals or groups either inside or outside of the Selma jail (R. 207-208), but solely for "protection, protective custody" (R. 207).

#### *Incarceration and Interrogation Preceding "Confession"*

So far as material to the confession issue, petitioner was in the custody of police from Sunday, May 17 through Tuesday, May 26. All of this time from around noon, Monday the 18th, was spent at Kilby. The interrogations took

<sup>2</sup> The record on this point indicates that on the Saturday following the Thursday confession, John McGee, Esq., a practicing attorney of Montgomery, made an effort to see petitioner, but was sent away by the Warden (R. 324). The reasons for refusing him access were, as the Warden stated, "he refused to identify himself as an attorney." However, in response to the next question the Warden replied that he did identify himself "orally" and that the Warden knew of him (R. 325). The Warden then testified that Mr. McGee did inform that he was a practicing attorney, but "didn't say where his office was" (R. 325). On redirect examination by the solicitor the Warden testified that he does not "permit lawyers who have not been retained by the prisoner or his family to solicit . . ." and that Mr. McGee did not inform the Warden that he had been retained by the family (R. 331).

When defendant's present counsel appeared to see him—after he had confessed—they identified themselves to no greater extent than did Mr. McGee and there was no more inquiry by the Warden into their authority to see the prisoner "any more than the man out there said they were lawyers" (R. 333). This was because he was their "own prisoner" and "we can let anybody see him that we want to" (R. 333).



place at the following times and under the following circumstances:

Sunday, May 17: Questioning by Captain Baker 10:00 a.m., to 12:00 noon (R. 210).<sup>3</sup>

Thereafter police drove petitioner around the city to view alleged scenes of crimes (R. 216).

That afternoon petitioner was questioned two and a half or three hours (R. 211).

Monday, May 18: Petitioner was interrogated from 9:00 a.m. to 11:00 a.m. (R. 211). Petitioner was then driven by three police officers (R. 208) to Kilby and back again "several times" (R. 244) and left at Kilby (R. 200, 201, 211, 212). Kilby is fifty-five miles from Selma (R. 244) and eighty or ninety miles from petitioner's home in Marion. Captain Baker apparently questioned petitioner while they were driving (R. 212, 244).

Monday afternoon, May 18: Petitioner was questioned "several" hours (R. 212).

Tuesday, May 19: Petitioner was kept in "segregation" (R. 323-324).<sup>4</sup>

Wednesday, May 20: Petitioner was questioned for a "little while" in the morning (R. 212).

That afternoon he was questioned for "several" hours the conversation ending not "too late" that "evening" (R. 212-213).

Thursday, May 21: Petitioner was questioned for about

<sup>3</sup> Captain Baker testified that "I would usually start off the conversation each time, and I'm sure some of the witnesses heard me advise the defendant that he was entitled to counsel and his various rights" (R. 214). He also testified that to his knowledge petitioner had not been threatened, nor had any hope of reward been held out to him (R. 191).

<sup>4</sup> The Warden explained that this was not "solitary confinement" in the sense that it was ordered for punishment, but merely to safeguard the prisoner. He was not allowed to mingle with other prisoners (R. 324).



two hours in the afternoon (R. 214). That evening he was questioned for about one and one half hours (R. 214-215).<sup>5</sup> These interrogations were attended by Captain Baker who did most of the questioning (R. 213) and by Sheriff McCain, Lt. Ware, Mr. Hare (the Circuit Solicitor), Mr. Reese (the County Solicitor), Dr. Sowell (the State Toxicologist) and Mr. Burford (Kilby's Warden) (R. 213-214). Captain Baker asked most of the questions (R. 213). The others—all of whom were not present at all times—also participated (R. 214-215), although the Warden perhaps did not (R. 214).

On Thursday petitioner made the first alleged confession in this case (R. 323-326).

At the time of this confession petitioner had been held in custody for five days and subjected to approximately twenty hours of interrogation.<sup>6</sup>

Petitioner's father went to Kilby on the Thursday that the confession was made, but was unable to see his son until Sunday (R. 304).

Following the Thursday confession, which was tape recorded (R. 232-236) interrogation of petitioner continued.

On Friday, May 22, he was confined in his isolated cell.

<sup>5</sup> The statements about matter of fact in the text are all uncontradicted. There is, in addition, conflicting testimony that the interrogation immediately preceding the Thursday confession lasted 9 hours. A story in the *Selma Times-Journal* stated "The Perry County negro, who was picked up on suspicion last Saturday night, broke down at 6 p.m. yesterday and made his complete confession to Captain Wilson Baker after a 9-hour questioning session" (R. 248). The entire article appears at R. 327. Captain Baker denied that he gave this information to the reporter (R. 248) and it was also denied that any other state officer furnished this information. "The reporter who wrote the story testified that he obtained the information therein from the Selma police (R. Original 773, 774). But on cross examination by the Solicitor the reporter testified that the figure of "9 hours" was based purely upon "assumption." (R. Orig. refers to the typewritten Record).

<sup>6</sup> Petitioner uses the term "approximately" for the reason that "several" may mean two or more hours, perhaps substantially more. Twenty hours is probably a conservative estimate.

On Saturday, May 23, he was questioned for three and one half hours. This is the day that John McGee, Esq., of Montgomery, attempted to see petitioner, but was refused access to him.<sup>7</sup>

On Tuesday, May 26, petitioner was questioned for three and one half to four hours (R. 316) following which a second confession, in writing, was obtained.

By this time prisoner had been in custody for almost ten full days and had been subjected to at least twenty-seven hours of interrogation. He was indicted on at least six charges of first degree burglary although in this case he was tried only for one (R. 346, 340).

### *Motion to Quash*

Before trial petitioner filed motions to quash the indictment on the ground that Negroes were systematically excluded from grand and petit juries in Dallas County, Alabama, contrary to the Fourteenth Amendment to the United States Constitution (R. 4, 8). On this issue one witness, a practicing attorney in Dallas County since 1903, who had a large criminal practice testified that he had never "seen a Negro serve on either a grand jury or a petit jury" (R. 29).<sup>8</sup>

No Negro sat on the grand jury which convicted petitioner (R. 68).

The jury roll in this case was prepared after petitioner had successfully prevailed on an earlier motion to quash (R. 340). The Jury Commissioners, between October 5 and 17, 1953 (R. 72-73) made up a new jury roll. A Commissioner

<sup>7</sup> See footnote 2, *supra*.

<sup>8</sup> Another witness in practice for 20 years had never known a Negro to serve on a Grand Jury (R. 37). All of the lawyers including the Circuit Solicitor who had been in office since 1946 testified that they had never known a Negro to serve on a Dallas County or petit jury, although they knew of some who had been on the venires (R. 27-66).

testified that the new roll contained the names of approximately 1500 white persons and 250 Negroes, although the three Commissioners were able to identify but 50 (R. 160), 177 (R. 159) and 190 (R. 167) Negroes, respectively, on the rolls (R. 77-78). The Commissioners used personal contacts, the city directory, the telephone book and personal knowledge to make up the roll (R. 78), but impersonal sources were employed only insofar as the Commissioners were personally acquainted with the persons listed therein (R. 79). In addition to individuals whom the Commissioners knew they "asked prominent men within the community to offer us the names of qualified Negroes to be placed in the box" (R. 81). At the time each name of a Negro was placed in the box he was known to be a Negro (R. 80). They asked two Negroes for names, but they furnished nothing (R. 105).

The Chairman explained the exclusion of Negroes otherwise qualified for service by stating that the Commission did not list persons in certain occupations who were exempt from service by statute, if they chose to claim their exemption (R. 112).

A substantial number of qualified Negroes were never called; many of them were exempt but did not receive the option of declining to claim their exemption. These included a college president (R. Orig. 110), a former college president, graduate of Brown University, and member of Phi Beta Kappa, who had lived in Dallas County 60 years (R. Orig. 227-229), a Presiding Elder of the AME Church (R. Orig. 181), dentists, teachers, physicians, businessmen, laborers, mail clerks, mail carriers, and farmers, all of them residents of Dallas County, Alabama (R. Orig. 110-366).

But while the names of Negroes who might claim exemption were not included at least 15 exempt white persons were included (R. 138-145, 149, 152-153, 156).

## The Trial

The motion to quash was overruled and petitioner went to trial. At the trial the evidence that petitioner had committed the crime for which he was being tried consisted solely of the confessions discussed *supra*. Petitioner objected to their admission on the ground that they had been obtained in violation of rights guaranteed by the Fourteenth Amendment. (R. 91-192, 203-230, 258).<sup>9</sup>

Petitioner's motions were overruled by the trial court.

Petitioner also offered to take the stand for the purpose of proving the involuntary nature of the "confession" and for no other purpose; this offer was refused (R. 230).<sup>10</sup>

Neither prosecutrix's testimony, nor any other evidence

---

<sup>9</sup> "Attorney Hall: If your Honor please, we now object to the introduction in evidence of this alleged whatever it is, sir—this paper, these five separate sheets of paper bound together with a Gem clip—on the grounds they have not been properly identified, sufficient predicate has not [fol. 609] been laid, it has not been shown who executed them, and the paper does not indicate when it was executed, and there is no way in the world to tell whether this is the entire whatever it purports to be or not, sir, and that it is incompetent for any purpose; and on the grounds that whatever statements may or may not be on this particular paper were extorted from him under duress because of violence, threats of violence, incarceration in the penitentiary and in the City jail, constant questioning—it has been indicated that some of the questioning went as long as nine hours—and that it serves no purpose and is illegal; and that it was taken from this defendant, if taken at all, in violation of all of his rights under the laws and constitution of the State of Alabama and under the Fourteenth Amendment to the Constitution of the United States, and that he suffered a loss of equal protection of law as guaranteed to him under the constitution of our State and the Fourteenth Amendment to the Constitution of the United States of America." (R. 258)

<sup>10</sup> "Attorney Hall: We would like to make an offer to put this defendant on the stand for the purpose of refuting certain allegations by the State with reference to the voluntary nature of what purports to be certain extra judicial admissions, and for no other purpose.

"Solicitor Hare: Now, may it please the Court, if the defendant takes the stand, I insist that he be subject to cross-examination on any and every item that is in evidence. I am not willing to make any agreement of limitation." (R. 230).



pointed to petitioner as the invader of prosecutrix's home. Besides the confessions, the State's case consisted solely of the testimony of two white women (R. 263, 264) that petitioner had invaded their homes in March and May of 1953 (R. 264-265).<sup>11</sup> This testimony was admitted for the purpose of indicating petitioner's "intent". (Opinion of the Supreme Court of Alabama, R. 351).

Defendant's defense consisted of testimony by his employer (R. 271) and his employer's general manager (R. 275), that defendant had worked until an hour that would have made it impossible for him to be at the scene of the alleged crime at the time it occurred. There was also character testimony on behalf of defendant (e.g. Orig. 647, 649). In the alternative, defendant proffered a defense of insanity (R. 282, 287, 292).

Petitioner was convicted of the crime of burglary in the first degree and sentenced to death.

### *Opinion of Supreme Court of Alabama*

The Supreme Court of Alabama affirmed, holding as to the jury point, "The evidence does not show that some Negroes as well as whites who were competent to serve and not exempt were not put on the roll. It may be Negroes were systematically omitted prior to the roll made in October 1953, but that was not true in making up that particular roll" (R. 345).

The Supreme Court of Alabama held as to the confession point (that the confession was not coerced. "The evidence was without conflict that it was voluntary. The authorities sustain our view that questioning a suspect in custody of the law is not prohibited by common law or the Constitution (nor by statute, we may add), and a confession so obtained

<sup>11</sup> One of these women was able to identify petitioner by his "eye" R. Orig. 622.



is not for that reason alone rendered inadmissible.—*Phillips v. State*, 248 Ala. 510, 28 So. 2d 542. In this case the evidence showed without conflict that the officers did not intimidate appellant in any way. They were not armed when he made the recorded statement. He was in prison under protection against possible attack by others. But there was not shown to be threats of violence by the public or unusual excitement.” (R. 349).

As to petitioner’s objection that he was denied the right to controvert the state’s evidence, the court held that “If he proposed to testify to facts showing that the confession was unduly influenced, he certainly ought to respond to questions as to his guilt in fact and to any matter relevant thereto” (R. 350). On this point two Justices disagreed with the majority although they do not believe that the error was reversible (R. 352).

## ARGUMENT

### I

#### A

**Due Process Of Law Was Denied Petitioner An Ignorant, Mentally Deficient Negro When Confessions Were Extracted From Him While He Was Persistently Questioned For Ten Days, On A Capital Charge At Kilby State Penitentiary Where He Was Kept Incommunicado “Segregated” And In “Protective Custody” On An “Open Charge Of Investigation” Following Illegal Arrest.**

In this case, the circumstances<sup>11a</sup> preceding the first and second confessions closely resemble in quality and quantity

<sup>11a</sup> Completely detailed description of the Record appears in the Statement, *supra*.

those which this Court has many times condemned as coercive:

Petitioner is an ignorant, mentally deficient <sup>12</sup> Negro.<sup>13</sup> He was charged with a capital offense which ordinarily excites passions which here were aggravated to the point of placing "unusual pressure" on the police. He was apprehended by citizen's arrest and incarcerated in violation of Alabama law which makes special provision for protecting the rights of an accused following such an arrest.<sup>14</sup> He was held on "an open charge of investigation", and his arrest was not recorded with the Recorder in accordance with usual procedure. He was taken more than 50 miles to the Kilby State Penitentiary and kept in "protective custody," and in "segregation"—not as Kilby's prisoner—but in "safekeeping" in which status no one was permitted to see him without the consent of Selma. There was an apparent exception for counsel—not recognized until after peti-

<sup>12</sup> Defendant's mental capacity to understand and intelligently conduct himself following arrest has been deemed important by this Court in evaluating whether a confession has been coerced. *Haley v. Ohio*, 332 U.S. 596; *Ward v. Texas*, 316 U.S. 547, 555; *Harris v. South Carolina*, 338 U.S. 68, 70.

<sup>13</sup> This Court gives weight to the fact that defendant is a member of an unpopular racial group in ascertaining whether a confession is coerced. *Chambers v. Florida*, 309 U.S. 227, 237, 241; *Ward v. Texas*, 316 U.S. 547, 555; *Harris v. South Carolina*, 338 U.S. 68, 70, as part of considering his "condition in life" *Gallegos v. Nebraska*, 342 U.S. 55, 67. See Mr. Justice Jackson's dissenting opinion in *Ashcraft v. Tennessee*, 322 U.S. 143, 152, 173.

<sup>14</sup> Title 15, Code of Alabama Section 160:

"It is the duty of any private person, having arrested another for the commission of any public offense, to take him without unnecessary delay before a magistrate, or to deliver him to some one of the officers specified in Section 152 of this title, who must forthwith take him before a magistrate."

Among the officers specified in Section 152 are police officers, who did not take petitioner before a magistrate until after 10 days incarceration during which the two "confessions" were exacted.

tioner's "confessions."<sup>15</sup> He was persistently interrogated throughout his illegal detention.<sup>16</sup>

The coercive qualities of petitioner's treatment have been condemned frequently in this Court's opinions. As to the first confession alone, rendered after 5 days of imprisonment, this case closely resembles *Turner v. Pennsylvania*, 338 U.S. 62 (1949). Turner, charged with the capital offense of murder, was held illegally incommunicado without being told of his rights or given a hearing, for 5 days during which he was questioned a total of 23 hours, the longest day of questioning consisting of two 3-hour sessions.<sup>17</sup>

As to the second confession in this case obtained after 10

<sup>15</sup> Holding petitioner incommunicado was contrary to the almost universal rule. See statutes collected in *McNabb v. U. S.*, 318 U.S. 332, 342, fn. 7. Although there has been some discussion over whether alone this should vitiate a confession it is a serious factor to be weighed, because, "[t]o delay arraignment, meanwhile holding the suspect incommunicado, facilitates and usually accompanies use of 'third degree' methods. Therefore [this Court] regard[s] such occurrences as relevant circumstantial evidence in the inquiry as to physical or psychological coercion." *Stein v. New York*, 346 U.S. 156, 187. See also *Harris v. South Carolina*, 338 U.S. 68, 71; *Turner v. Pennsylvania*, 338 U.S. 62, 64; *Ward v. Texas*, 316 U.S. 547, 555; *Ashcraft v. Tennessee*, 322 U.S. 143, 152; *Malinski v. New York*, 324 U.S. 401, 412, 417; *Turner v. Pennsylvania*, 338 U.S. 62, 66, 67.

<sup>16</sup> Persistent interrogation has been held an important factor in evaluating whether a confession has been coerced, *Chambers v. Florida*, 309 U.S. 227, 231; *Ward v. Texas*, 316 U.S. 547, 555; *Ashcraft v. Tennessee*, 322 U.S. 143, 154; *Haley v. Ohio*, 332 U.S. 596, 600; *Turner v. Pennsylvania*, 338 U.S. 62, 64.

<sup>17</sup> In a connected case *Johnson v. Pennsylvania*, 365 Pa. 303, rev. 340 U.S. 881 (1950), the prisoner was held incommunicado for 5 days before arraignment, and questioned from time to time. He had no lawyer—the state alleging he did not want one and that he did not desire to see friends or relatives. Comparing the questioning of Johnson to that of Turner, the Pennsylvania Supreme Court pointed out that while the two prisoners had been held 5 days, Turner had been subjected to 23 hours of interrogation whereas Johnson had been questioned for a total of only 6 hours during those 5 days—in periods of only 15 minutes to (1½ hours). This Court reversed the conviction in the *Johnson* case *per curiam*, citing *Turner v. Pennsylvania*.

days imprisonment at Kilby the holding in *Turner* applies with double effect—if such matters can be calculated in terms of days and hours.

These facts bring the questioning of petitioner squarely within the long line of this Court's decisions which condemn coerced confessions employed to convict of crime.

## B

### **Petitioner Was Denied Due Process of Law When He Was Forbidden To Testify During the State's Case And On Voir Dire To Determine Admissibility Of The "Confessions", Concerning The Fact That They Had Been Coerced.**

Evidence that the confessions were coerced, discussed in Part A, *supra*, comes from State witnesses. To this petitioner sought to add by testifying during the State's case solely on the question of the admissibility of the confessions.

The Court ruled—agreeing with the State's objection—that if petitioner testified on admissibility he would also be required to testify on guilt or innocence. The majority of the Supreme Court of Alabama affirmed on this point—but two justices disagreed on the proposition.

The integrity of a defendant's defense against the admissibility of coerced confessions would be seriously jeopardized—if not destroyed—if the defendant, the one man who knows most about the circumstances surrounding their exaction<sup>18</sup> could not testify on their admissibility. To condition this right on the waiver of another of equal and

<sup>18</sup> "A defendant from whom a confession had skillfully been extorted is generally without practical remedy. The only witnesses to the coercive practices are those who participated in and encouraged them." Bader, "Coerced Confessions and the Due Process Clause" 15 *Brooklyn L. Rev.* 51, 70 (1948).



cognate importance—that of not being required to testify<sup>19</sup>—violates that fundamental fairness which constitutes due process of law.

This question has not been previously decided by this Court, although the issue has been presented in form not ripe for adjudication.<sup>20</sup>

The practice in the state courts appears to be to permit insulated testimony on this particular issue, although perhaps more often than not the issue has not been squarely decided.<sup>21</sup>

The Supreme Court of Alabama majority's reasoning that once a defendant testifies on one point he must answer questions on all (R. 350) is inapposite. Defendant did not propose to testify during his own defense. Nor did he propose to testify on any matter of concern to the jury. He desired to testify on a matter of interest to the judge alone—admissibility, a question of law.

However, the Fourteenth Amendment immunity against

<sup>19</sup> *Twining v. New Jersey*, 211 U.S. 78 (1908) and *Adamson v. California*, 332 U.S. 46 (1947) hardly go so far as to hold that a defendant can be required to testify, and it does not appear that any state has adopted such a rule. The holding of these two cases—that a prosecutor may comment on defendant's failure to testify—something which is undoubtedly noticed by the jury at any rate—is not the same as putting the defendant on the stand and requiring him to answer questions under penalty of contempt and perjury.

At any rate, Alabama would not require all defendants to testify—only those who seek to prove that their confessions are coerced.

<sup>20</sup> *Stein v. New York*, 346 U.S. 156, 174 (1952). See also *Witt v. U. S.*, 196 F.2d 285 (C.A. 9th, 1952) where the court held that defendant had not been prevented from testifying for such a limited purpose.

<sup>21</sup> *State v. Thomas*, 208 La. 548, 554, 23 So. 2d 212 (1945); *Summer-ville v. State*, 207 Miss. 54, 70, 41 So. 2d 377, 382 (1949); *People v. Trybus*, 219 N.Y. 18, 113 N.E. 538 (1916) (the prosecutor had so limited himself); *State v. Bouse*, 199 Or. 676, 701, 264 P.2d 800, 811 (1953); *State v. Jones*, — S.C. —, 91 S.E.2d 1, 4 (1956); *State v. Ashdown*, — Utah —, 296 P.2d 726, 729 (1956); *State v. Johnson*, 226 La. 30, 43, 74 So. 2d 402, 407 (1954).



self-incrimination by coerced confession would become practically meaningless if courts were permitted to impose impediments which would in effect destroy the right. The Supreme Court of Louisiana described the reason for not permitting such conditioning in terms that precisely apply here:

[I]t would be a simple matter for an unconscionable person to extort from the accused while alone a confession—and thereafter falsely testify that it was given freely and voluntarily. Whereupon the accused would be compelled to take the stand to contradict the witness, thereby subjecting himself to cross examination on the whole case, or he would have to let the extorted confession go unchallenged. Either of these alternatives would do violence at least to the spirit of the [Louisiana] Constitution.<sup>22</sup>

Whatever prophylactic effect the Fourteenth Amendment rule against coerced confessions may have in deterring police officers who may fear losing convictions for overzealous interrogation of prisoners, is vitiated if this qualification is permitted to stand. The prisoner with a criminal record, or with other perhaps less invidious qualities which he might prefer not to display to a jury, becomes the easiest mark for the police in seeking inculpatory statements. Should the defendant seek to attack the voluntariness of the confession, he then opens himself to cross examination from which the state constitution otherwise protects him. Other defendants are immune.

If this rule is permitted to stand defendants who have had confessions coerced from them into evidence will be often practically without remedy to prevent their admission.

<sup>22</sup> *State v. Thomas*, 208 La. 548, 555, 23 So. 2d 212, 214.

## II

**Petitioner Was Denied Rights Guaranteed By The Fourteenth Amendment When Convicted Following Indictment By A Grand Jury In A County Where No Negro Has Ever Sat On A Grand Jury; Where Negroes Were Included Solely Because Of Race On The Panel From Which Was Chosen The Jury That Indicted Him; And Where Jurors Were Selected On The Basis Of Personal Acquaintance With The Jury Commissioners.**

No Negro has ever served on a grand jury in Dallas County, Alabama, notwithstanding that there are more Negroes than whites in the County (R. 89). Prior to the petitioner's indictment the jury rolls were revised and the Jury Commissioners testified that of 1,750 panelists perhaps 250 Negroes' names were placed on the rolls. This was because they were Negroes, notwithstanding doubt by at least one Commissioner as to their ability (R. 102). There is no evidence that in deliberately selecting these Negroes, those who might claim exemption—i.e., those eligible for service but excusable at their own option—were selected; there were many such Negroes in the county. However, a substantial number of exempt white persons were placed on the rolls.

Moreover, the selection of names was limited to persons known to the Commissioners or known to the persons with whom they were acquainted.

This Court has held in *Cassell v. Texas*, 339 U.S. 282:

An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race. (At p. 287).

This is but part of the larger doctrine that selection for jury service must be impartial and fair and without regard to race.

Alabama law provides an objective and systematic procedure for making up the jury rolls. The statute (R. 342) provides that "The Jury Commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men . . . ." Jurors are to be selected by scanning the registration lists, the lists returned from the tax assessor, names in city directories, telephone directories and any and every other source of information from which information may be obtained. 30 Code of Alabama, Section 24. The Jury Commissioners, however, limited themselves to persons whom they knew. They consulted the objective sources only to the extent that they knew the persons therein. In addition, they asked persons whom they knew to submit names. These individuals from whom information was requested included but two Negroes who submitted nothing.

As Mr. Justice Reed pointed out in the *Cassell* case "It may be assumed that in ordinary activities in Dallas County [Texas] acquaintanceship between the races is not on a sufficiently familiar basis to give citizens eligible for appointment as Jury Commissioners an opportunity to know the qualifications for grand-jury service of many members of another race."

The deliberate employment of a system calculated to produce a disproportionately large number of white people cannot meet Fourteenth Amendment standards.

Moreover, as the Statements of Facts indicates, the failure to call a large number of qualified Negroes—who surely come within the definition of "all" qualified persons—solely because they were exempt, was not impartial, when a sub-

stantial number of exempt white persons were included. As Mr. Justice Clark concurring in the *Cassell* case pointed out "The record indicates clearly that there were Negroes qualified and available whom the Commissioners did not know, but whom upon inquiry they should have considered." (At p. 298).

In *Avery v. Georgia*, 345 U.S. 559, the late Chief Justice Vinson held "The Jury Commissioners, and the other officials responsible for the selection of the panel were under a constitutional duty to follow a procedure—"a course of conduct" which would not "operate to discriminate in the selection of jurors on racial grounds." The procedure here necessarily operated to discriminate in the selection of persons on racial grounds.

The long history of discrimination against Negroes in the selection of juries—and no Negroes sat on the grand jury which condemned petitioner—requires that the judgment below be reversed. Moreover, the limitation of selection to persons whom Commissioners personally knew or those whom they knew second-hand—not required by Alabama law—incorporated into the jury system a factor which necessarily produced a disproportionately small number of Negroes for jury service in Dallas County.

Those Negroes who were selected were deliberately placed on the jury because of their race.

Such a system clearly violates the mandate of the Fourteenth Amendment which requires that jury selection shall be impartial and fair and that no person shall be included or excluded because of race.

WHEREFORE, for the foregoing reasons it is respectfully submitted that the judgment below be reversed.

PETER A. HALL,  
ORZELL BILLINGSLEY,  
*1630 Fourth Avenue, North,*  
*Birmingham, Alabama,*

JACK GREENBERG,  
*107 West 43rd Street,*  
*New York 36, New York,*  
*Counsel for Petitioner.*

RALPH J. TEMPLE,  
*Of Counsel.*

(1881-2)



LIBRARY  
SUPREME COURT, U.S.

Office - Supreme Court, U.S.

FILED

DEC 1 1956

JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

---

**No. 53**

---

WILLIAM EARL FIKES,

*Petitioner,*

*v.*

STATE OF ALABAMA,

*Respondent*

---

**PETITIONER'S REPLY BRIEF**

---

PETER A. HALL,

ORZELL BILLINGSLEY,

1630 Fourth Avenue, North,

Birmingham Alabama,

JACK GREENBERG,

107 West 43rd Street,

New York 36, New York,

Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

---

**No. 53**

---

WILLIAM EARL FIKES,

v.

*Petitioner,*

STATE OF ALABAMA,

*Respondent*

---

**PETITIONER'S REPLY BRIEF**

In this brief petitioner will reply to some of the statements and arguments in the Brief of Respondent in the order in which they appear.

**Respondent's Statement**

Respondent asserts that "[I]t was not customary to enter a charge on the recorder's docket unless the suspect should demand a preliminary hearing." (Resp. Br. p. 9). But the Chief of Police testified in response to the following question: "Do you recall stating that in every case where a warrant was made, the information on the warrant was transferred to the recorder's docket, sir?" Answer "Yes, that is right."<sup>1</sup> (R. 221).

---

<sup>1</sup> There was later some qualification of this admission by the witness which in no way affects this case. He testified to the effect that unnumbered warrants—those served on out-of-town prisoners—were not placed on the recorder's docket (R. 222) but petitioner was not an out-of-town prisoner.

Despite confusion on some collateral aspects of the service of warrants and the placing of cases on the recorder's docket, two things remain clear: (1) Petitioner was taken to Kilby on Monday; the recorder held hearings on Tuesday (R. 197). The decision as to whether a prisoner goes before the recorder or not is made by the Chief or Captain of Police (R. 221). By their decision petitioner was not brought before a recorder or magistrate as required by Alabama law, especially in the exceptional case of civilian arrest,<sup>2</sup> and (2) prisoners taken within the city were customarily served a warrant (R. 222) which was entered upon the recorder's docket (R. 222)—which did not occur in this case.

Respondent asserts that "it was not established whether this attorney [who had been denied the right to see petitioner] had attempted his visit before or after the confessions." (Resp. Br. p. 11).

The Warden of Kilby Prison testified concerning the date on which counsel was barred: "It was one Saturday, but I don't remember the date." Question: "Was that before that alleged confession?" Answer: "Yes, I believe it was. I couldn't say that for sure." (R. 324). Petitioner submits that the substantially positive testimony of the state's witness, the warden, testifying on a matter concerning which the State was attempting to sustain its burden cannot be construed to mean that counsel was excluded at some later date.

Concerning the motion to quash the venire, respondent asserts that a number of impersonal sources were employed (i. e. phone book, city directory, etc.) (Resp. Br. p. 12), but neglects to say that these impersonal sources were used only when the persons listed thereon were known to a commissioner (R. 74-75) or known to persons whom the

---

<sup>2</sup> Title 15, Code of Alabama, Section 160.

commissioner asked to furnish names (R. 76-77). Therefore, the system was essentially that of selection from among persons known to the commissioners or known to their acquaintances.

### **Respondent's Argument**

In the argument it is stated that petitioner was transferred to Kilby "as a protective measure" (Resp. Br. p. 14).

But state's witnesses admitted that there was nothing against which petitioner needed protection (R. 207-208). Indeed, other prisoners in the Selma jail, held for the same offense, and concerning whom the public could have felt no differently, were not moved for "protection." (R. 207). Although there is no evidence that petitioner was taken before the recorder or any other magistrate, respondent states that "[i]t is questionable whether or not he was brought before a magistrate, although testimony shows that he was imprisoned on an order of the Circuit Judge of Dallas County, Alabama, (Resp. Br. p. 14). This was apparently an order to transfer a prisoner from a jail to the penitentiary and does not purport to have provided the safeguards of a preliminary hearing.<sup>3</sup>

Respondent argues that petitioner was permitted to see a sheriff and his employer shortly after his arrest (Resp. Br. p. 14). Of course these people had no legal obligation to secure counsel or otherwise aid petitioner, but even if their visit could be deemed to have legal significance, petitioner was effectively insulated from such contacts immediately thereafter, when on Monday morning, he was taken to Kilby where virtually all the interrogation, and the solitary confinement occurred.

<sup>3</sup> The Captain of Police testified that it was "an order or request or something of the Circuit Judge, Judge Callan." (R. 201).

Effort is made also to confer legal significance on the fact that after one "confession" petitioner was visited by his father. The record reveals that petitioner's father came to see him on Thursday (R. 305) prior to the first confession but was unable to see him until Sunday (R. 305) after it had been exacted. The father, who was so incapable or unaware that he never spoke to or authorized a lawyer in his son's capital case (R. 305) is hardly a man to whom the state can shunt its duty to afford adequate procedural protection.

There was also an effort to confer legal significance on the fact that he was "advised of his rights" by his interrogators. Petitioner submits that in this capital case, even if this defendant had been advised of his rights in open court and had expressly waived the right to counsel, in view of petitioner's ignorance,<sup>4</sup> and mental condition<sup>5</sup> this Court would hold such waiver to be without legal significance. In *Rice v. Olson*, 324 U.S. 786, 788-789, it was held "it is enough that a defendant charged with an offense of this character [burglary] is incapable adequately of making his defense, that he is unable to get counsel, and that he does not *intelligently and understandingly waive counsel*;"<sup>6</sup> (emphasis supplied).

Respondent cites several cases, arguing that they sustain the judgment below. But in *Gallegos v. Nebraska*, 342 U.S. 55, the Nebraska confession was given almost instantaneously upon being taken into custody by Nebraska (at p. 58). The Texas confession there which some members of this Court thought Nebraska should not have to defend (at p. 68), was rendered after four days confinement (at p. 57). The Texas questioning was no more than an hour

<sup>4</sup> Third grade education completed at age 16 (R. 307, 308).

<sup>5</sup> Uncontradicted testimony by three experienced psychiatrists that he was schizophrenic (R. 285, 290, 295).

<sup>6</sup> See also *Uveges v. Pennsylvania*, 335 U.S. 437, 441.



or two on but perhaps two of these days (at pp. 57-58). In *Stein v. New York*, 346 U.S. 156, the twelve hours of questioning spanned 32 hours (at p. 185). In *Stroble v. California*, 343 U.S. 181, one confession was given *instantly* (at pp. 185-186), the other after two hours (at p. 187). In *Brown v. Allen*, 344 U.S. 443, there was no evidence of prolonged questioning (at p. 476).

But mere calculation of days and hours is not all that distinguishes the cases cited by respondent. In *Lisenba v. California*, 314 U.S. 219, defendant was a man of business experience. He was represented by counsel at arraignment in court and thereafter. In *Stein* defendants were tough criminals whom a majority of this Court deemed competent to defend their own rights. In *Gallegos* the illegal detention took place ~~a~~ter not prior to the Nebraska confessions.

Here we have an ignorant, mentally ill Negro defendant probably as incapable of defending his own rights as a prisoner can ever be. On a capital charge, he was taken a distance of fifty miles to the state penitentiary by the police who were under "unusual pressure" to solve a number of burglaries and rapes including a case of burglary and attempted rape involving the Mayor's daughter. There he was questioned, the state admits, at least 27 hours over a period of ten days. When not under interrogation he was kept in solitary. He was not arraigned nor advised of his rights by a nonpartisan judicial officer authorized to appoint counsel. The complex of facts indicates a compulsion present in none of the cases cited by respondent.

Respondents oppose petitioner's assertion that to require him to testify fully on the *voire dire* as to admissibility of the confession denied his constitutional rights. But respondents fail to make the fundamental distinctions between petitioner's *testimony in his own defense*, during his own case, and his testimony on a point of law bearing only

on the admissibility of the confession. In *Witt v. United States*, 196 F. 2d 285 (9th Cir., 1952), the issue was whether defendant could take the stand for a limited purpose in his defense.

If petitioner could be required to testify generally on this issue of admissibility, the state could achieve indirectly what it is forbidden to achieve directly. Even if his testimony on the *voire dire* would exclude the confession the state could nonetheless obtain thereby other information to aid in conviction. In *Stein v. New York*, 346 U.S. 156, 203, Justice Frankfurter dissenting, in discussing an interpretation of the majority opinion, wrote:

... But if law officers learn that from now on they can coerce confessions without risk, since trial judges may admit such confessions provided only that, perhaps through the very process of extorting them, other evidence has been procured on which a conviction can be sustained, police in the future even more so than in the past will take the easy but ugly path of the third degree. I do not remotely suggest that any such result is contemplated by the Court. But it will not be the first time that results neither desired nor foreseen by an opinion have followed.

Identical results would follow from holding that the trial court was correct in upholding respondent's intention to question petitioner—during petitioner's testimony on the preliminary hearing—as to every matter in evidence.<sup>7</sup>

<sup>7</sup> Some of the clearest evidence of the involuntariness of the confessions appears upon the face of one of them. The tape recorded confession (R. 232-237) consists almost entirely of "Yes" and "No" answers to leading questions, and at crucial points the leading took the form of putting highly incriminating words in defendant's mouth. It will be recalled that prosecutrix testified that the burglar entered her home through a bedroom window (R. 187). Concerning the point of the burglar's entry, the

*State v. Whitener*, 191 N.C. 659, 130 S.E. 603 (1926) a case not cited in petitioner's original brief presented a similar situation. In that case the Supreme Court of North Carolina held:

The record, therefore, presents the question squarely as to whether the prisoner, at his own request, was entitled, as a matter of law, to testify before the judge in the absence of the jury, on the preliminary inquiry addressed only to the court, with respect to the admissibility of the alleged confession as evidence against him. We think the prisoner, at his own request, was entitled to be heard on this preliminary inquiry—the credibility of his testimony, of course, being a matter for the judge. (at p. 661)

In this case the jury was present during the *voir dire* but even if it had been excluded that would not have prevented the state from obtaining evidence in its cross-examination of petitioner which it might have introduced later during the case to help secure his conviction.<sup>8</sup> Such evidence as it might obtain from this general cross-examination would be the only evidence upon which it could secure petitioner's conviction, for apart from the conviction there was no evi-

transcript of the tape recording of petitioner's alleged confession is as follows:

"Now, how did you get in that house, William? Er—I went around to the side window and took a piece of wire and opened the screen and come through that.

"And what kind of room were you in then? I was in a—er—

"What kind of room was it, William, do you remember? I was in a ki—

"In a bedroom with a child? Bedroom?

"Who was in that bedroom William? Baby."

<sup>8</sup> Moreover, even though the jury had been excluded, if petitioner had been compelled to testify against himself one could not be realistically certain that incriminating testimony would not be brought to the jury's attention.

dence whatsoever of petitioner's guilt. Indeed, if Alabama were to hold that the confession were coerced, it could then assert under *Stein v. New York, supra*, that there should be no reversal of the conviction because other evidence in the record tended to establish a finding of guilty. And this evidence could be the evidence which the state obtained through petitioner when he took the stand to testify that the confession was involuntary.

Respectfully submitted,

PETER A. HALL,  
 ORZELL BILLINGSLEY,  
 1630 Fourth Avenue North,  
 Birmingham, Alabama.

JACK GREENBERG,  
 107 West 43rd Street,  
 New York 36, New York.

(2700-3)



PETITION NOT PRINTED

Office - Supreme Court, U. S.

FILED


JAN 31 1956

HAROLD B. WILLEY, Clerk

IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1955

No. ~~390~~ 

53

**WILLIAM EARL FIKES,**

Petitioner,

vs.

**STATE OF ALABAMA,**

Respondent.

**BRIEF AND ARGUMENT**

In Opposition to Petition for Writ  
of Certiorari.

**JOHN PATTERSON**

Attorney General of Alabama

**ROBERT STRAUB**

Assistant Attorney General of Alabama

**PAUL T. GISH, JR.**

Assistant Attorney General of Alabama

*Attorneys for Respondent*



# **I N D E X**

## **. Subject Index**

	<b>Page</b>
Opinions of the Court Below.....	<b>1</b>
Jurisdiction.....	<b>1</b>
Issues.....	<b>2</b>
Statement of the Case.....	<b>3</b>
Statement of the Facts.....	<b>4</b>
Brief and Argument.....	<b>8</b>
1. The lack of proportional representation of Negroes on the jury does not constitute discrimination under the facts presented. The evidence does not show that Negroes were systematically excluded from service on the grand jury which indicted the petitioner and on the petit jury which convicted him.....	<b>8</b>
2. The trial court did not commit reversible error by refusing to rule that the petitioner could present himself as a witness on voir dire to testify that a confession was involuntarily made without subjecting himself to general cross examination. A confession is not inadmissible solely because it was made after the arrest of the accused and while he was being held in jail.....	<b>9</b>

3. The guaranty of the Fifth Amendment to the Constitution of the United States that no person "shall be compelled in any criminal case to be a witness against himself," is not made effective against state action by the Fourteenth Amendment to the Constitution of the United States.....	10
Argument.....	11
Conclusion.....	21
Certificate.....	21

#### TABLE OF CASES CITED

Adamson v. California, 232 U. S. 46, 91 L. Ed. 1903, 67 S. Ct. 1672, 171 A. L. R. 1223.....	11, 19
Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1286.....	8, 15
Alford v. United States, 282 U. S. 687, 75 L. Ed. 624, 51 S. Ct. 77.....	9
Bell v. Hood, 71 Fed. Supp. 813.....	11
Brown v. Allen, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397.....	8, 14
Burgess v. State, 256 Ala. 5, 53 So. 2d 568.....	10, 17
Carpenter v. State, 193 Ala. 51, 169 So. 531.....	10, 17
Cassell v. Texas, 339 U. S. 282, 94 L. Ed. 839, 70 S. Ct. 629.....	8, 14

Davis v. State, 240 Ala. 365, 199 So. 547.....	10
Ex parte Whistler, 65 Fed. Supp. 40.....	11
Fay v. New York, 332 U. S. 261, 91 L. Ed. 2043..	9, 11
Fikes v. State of Alabama, (2nd Div. 335), 81 So. 2d 303.....	1, 3
Foster v. Illinois, 332 U. S. 134, 91 L. Ed. 1955, 67 S. Ct. 1716.....	11
Garbo v. United States, 145 Fed. 2d 966.....	10
Gast v. State, 232 Ala. 307, 167 So. 554.....	10
Gonzales v. Texas, 272 S. W. 2d 524.....	10, 17
Kennedy v. State, 186 Tenn. 310, 210 S. W. 2d 132, Cert. den. 333 U. S. 846, 92 L. Ed. 1129, 68 S. Ct. 659.....	8
Le More v. United States, 253 Fed. 887, Cert. den. 248 U. S. 586, 63 L. Ed. 434, 39 S. Ct. 184.....	10
Massachusetts v. Smith, 163 Mass. 411, 40 N. E. 189.....	10
Matthews v. United States, 145 Fed. 2d 823.....	10
Palko v. Connecticut, 302 U. S. 319, 82 L. Ed. 288, 58 S. Ct. 149.....	11
People v. Price, 871 Ill. 137, 20 N. E. 2d 61, Cert. den. 308 U. S. 661, 84 L. Ed. 463, 60 S. Ct. 94.....	8

<b>Powers v. United States</b> , 222 U. S. 303, 56 L. Ed. 448, 32 S. Ct. 281 .....	9
<b>Raffel v. United States</b> , 271 U. S. 494, 70 L. Ed. 1054, 46 S. Ct. 566 .....	9
<b>Shipley v. United States</b> , 281 Fed. 134, Cert. den. 260 U. S. 726, 67 L. Ed. 483, 43 S. Ct. 89 .....	10
<b>Simon v. United States</b> , 123 Fed. 2d 80, Cert. den. 314 U. S. 694, 86 L. Ed. 555, 62 St. Ct. 411 .....	9
<b>Smith v. Mississippi</b> , 162 U. S. 592, 40 L. Ed. 1082, 16 S. Ct. 900 .....	9, 12
<b>Snyder v. Massachusetts</b> , 291 U. S. 97, 78 L. Ed. 674 .....	11
<b>Stein v. New York</b> , 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077 .....	9
<b>Tarrance v. Florida</b> , 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402 .....	8, 14
<b>Thomas v. Texas</b> , 212 U. S. 278, 53 L. Ed. 512, 29 S. Ct. 383 .....	8
<b>Twining v. New Jersey</b> , 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14 .....	11
<b>United States v. Buckner</b> , 108 Fed. 2d 921, Cert. den. 309, U. S. 609, 84 L. Ed. 1016, 60 S. Ct. 613 .....	10

United States v. Gross, 103 Fed. 2d 11 ..... 9

Witt v. United States, 196 Fed. 2d 285 ..... 9, 18

### STATUTES CITED

Code of Alabama 1940, Title 14, Section 85 ..... 2, 3

Code of Alabama 1940, Title 30, Section 3, as  
amended by Act No. 243, Acts of Alabama  
1943, page 197 ..... 13, 14

Code of Alabama 1940, Title 30, Section 21, as  
amended by Act No. 325, Acts of Alabama  
1943, page 309 ..... 14

United States Code, Judiciary and Judicial Pro-  
cedure, Title 28, Section 1257(3) ..... 1



IN THE  
**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1955**

**No. 378, Misc.**

**BRIEF AND ARGUMENT**

**In Opposition to Petition for Writ  
of Certiorari.**

**BRIEF AND ARGUMENT  
FOR RESPONDENT**

**I.**

**OPINION OF THE COURT BELOW**

The opinion of the Supreme Court of Alabama<sup>2</sup>  
is reported as follows:

*William Earl Fikes v. State of Alabama*, 2nd  
Division 335, 81 So. 2d 303.

**II.**

**JURISDICTION**

The petitioner has applied for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Supreme Court of Alabama rendered May 12, 1955, rehearing denied June 23, 1955, under the provisions of Title 28, Section

1257 (3), United States Code, Judiciary and Judicial Procedure. (See petitioner's brief, pages 1, 2 and 3).

### III.

### ISSUES

The petition in this case raises the following issues:

1. Whether the petitioner, who stands convicted in the State of Alabama of burglary in the first degree, as defined by Title 14, Section 85, Code of Alabama 1940, was indicted by a grand jury and convicted by a petit jury from which Negroes were systematically excluded from jury service, thereby being denied the due process of law guaranteed him by the Fourteenth Amendment to the Constitution of the United States. The State of Alabama contends that Negroes were not systematically excluded from jury service on said juries.

2. Whether the petitioner, who stands convicted in the State of Alabama of burglary in the first degree, as defined by Title 14, Section 85, Code of Alabama 1940; was denied the due process of law guaranteed him by the Fourteenth Amendment to the Constitution of the United States when the trial court refused to rule, upon motion made by the petitioner, that said petitioner could take the witness stand to testify on voir dire that a confession was involuntarily made without subjecting himself to general cross examination. After this refusal by the trial court

the petitioner did not take the witness stand. The State of Alabama contends that due process of law was not denied to the petitioner by the ruling of the trial court.

#### IV.

### STATEMENT OF THE CASE

The petitioner was tried and convicted in the Circuit Court of Dallas County, Alabama, under an indictment charging the offense of burglary in the first degree (Title 14, Section 85, Code of Alabama 1940). Before entering upon the trial in said Circuit Court, the petitioner filed motions to quash the indictment and venire. After hearing evidence on each of these motions, the trial court overruled each of them. Petitioner entered a general plea of "not guilty," and a plea of "not guilty by reason of insanity," and was found guilty as charged in the indictment by the jury. The jury fixed punishment at death by electrocution. The trial court overruled the petitioner's motion for a new trial and sentenced him in accordance with the verdict of the jury. The trial proceedings were reviewed by the Supreme Court of Alabama, which affirmed the judgment of conviction and the sentence imposed. See *William Earl Fikes v. State of Alabama* (2nd Division 335, May 12, 1955) 81 So. 2d 303. On November 19, 1955, petitioner filed with the Supreme Court of the United States his petition for writ of certiorari directed to the Supreme Court of Alabama. See *William Earl*

*Fikes v. State of Alabama*, Docket No. 378, Misc., October Term, 1955, Supreme Court of the United States.

V.

STATEMENT OF THE FACTS

The evidence was that on Friday night about "10:20" of April 24, 1953, Mrs. Jean Heinz Rockwell of Selma, Alabama, was asleep in her bedroom. She had two babies, one of whom was in an adjoining bedroom and the younger in her room. Her husband was not at home. When she awakened around "10:15" a Negro man was sitting on her as she lay in bed. She knew he was a Negro but did not see his face as it was covered. She could not identify petitioner as that person. He had a knife belonging to her which he had gotten from the kitchen. He told her he was going to kill her. She began struggling to get off the bed and with him holding on to her she managed to get into the hall (where there was a light) adjoining her room. She went all the way down the hall and into the living room in the front of her apartment. There he fell over a stool and fell on Mrs. Rockwell. She was screaming and he threatening to kill her with the knife at her throat, and he told her "to straighten out." She grabbed the knife and got it out of his hand. He jumped up and ran down the hall and out through the kitchen and back door. She fell up against the back door and locked it. It was locked when she went to bed but was open when he ran out of it. The kitchen was in the middle



of the apartment between the dining room and bedrooms. There was an outside entrance to the kitchen with a screen and wooden door. The screen to the window was also open and the window up. There were holes in the screen over by the latches, but these holes were not there before he entered the apartment.

During the spring of 1953, the City of Selma, Alabama, was terrorized because of the activities of a burglar-rapist in this city. Sometime around midnight of Saturday, May 16, 1953, the petitioner was taken into custody by a private citizen, Jake Youngblood, and taken to a gasoline service station where he was held until the police arrived. The police took the petitioner into custody at the request of said Jake Youngblood and placed him in the city jail.

The petitioner was "booked" when he was taken to the jail but was not charged with any crime at that time. On Sunday morning, May 17, 1953, the petitioner was questioned by Capt. Wilson Baker and Chief Mullen of the Selma Police Department. That afternoon Capt. Baker rode the defendant around in the City of Selma and questioned him with reference to the homes which had recently been broken into.

On Monday afternoon, May 18, 1953, the petitioner was carried to Montgomery, Alabama, and placed in Kilby Prison.

The petitioner was held at Kilby Prison for about a week for the City of Selma, Alabama. There



is some evidence that he was not allowed to have any of his family or friends visit during this period. However, his father did admit that he visited the petitioner one time during his stay at Kilby Prison.

The petitioner was subsequently indicted by the Grand Jury of Dallas County, Alabama, for burglary in the first degree and a great amount of evidence was taken on the trial of this cause on motions to quash the venire and the indictment on the grounds that his constitutional rights had been denied because of the lack of proportional representation of Negroes on the grand and petit juries.

The evidence on these motions showed that a far greater number of the names of white men were placed in the jury box in Dallas County than names of Negroes. However, this evidence showed that the Jury Commission of Dallas County had recently made great effort to secure the names of qualified Negro jurors to be placed in said jury box. The evidence further showed that a great many names of Negroes had recently been placed in said jury box.

The evidence in the trial of the merits in this cause showed that the petitioner made a confession on a tape recorder while he was held in Kilby Prison. Another confession was also made at Kilby Prison, which was typewritten by the secretary to the warden, and signed by the petitioner in the presence of the officers who had questioned him after said confession had been read to him. Both of these confes-

sions were introduced into evidence over the petitioner's objections.

Over the petitioner's objections the State was allowed to introduce evidence as to the identity of the petitioner by Mrs. Deloris Stenson, James Winfred Brown and Mrs. Claude Binford. The testimony of Mrs. Stenson and Mrs. Binford tended to connect the petitioner with other crimes. However, in his oral charge to the jury, the trial judge made it very clear that the testimony of these witnesses were introduced only for the purpose of showing the identity of the petitioner and for no other purpose.

VI.

BRIEF AND ARGUMENT

1. The lack of proportional representation of Negroes on the jury does not constitute discrimination under the facts presented. The evidence does not show that Negroes were systematically excluded from service on the grand jury which indicted the petitioner and on the petit jury which convicted him.

*Tarrance v. Florida*, 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402

*Akins v. Texas*, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276

*Thomas v. Texas*, 212 U. S. 278, 53 L. Ed. 512, 29 S. Ct. 383

*Cassell v. Texas*, 339 U. S. 282, 94 L. Ed. 839, 70 S. Ct. 629

*Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397

*Kennedy v. State*, 186 Tenn. 310, 210 S. W. 2d 132, Cert. den. 333 U. S. 846, 92 L. Ed. 1129, 68 S. Ct. 659

*People v. Price*, 371 Ill. 137, 20 N. E. 2d 61, Cert. den. 308 U. S. 551, 84 L. Ed. 463, 60 S. Ct. 94

*Smith v. Mississippi*, 162 U. S. 592, 40 L. Ed. 1082, 16 S. Ct. 900

*Fay v. New York*, 332 U. S. 261, 91 L. Ed. 2043

2. The trial court did not commit reversible error by refusing to rule that the petitioner could present himself as a witness on voir dire to testify that a confession was involuntarily made without subjecting himself to general cross examination. A confession is not inadmissible solely because it was made after the arrest of the accused and while he was being held in jail.

*Stein v. New York*, 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077

*Witt v. United States*, 196 Fed. 2d 285

*Raffel v. United States*, 271 U. S. 494, 70 L. Ed. 1054, 46 S. Ct. 566

*Alford v. United States*, 282 U. S. 687, 75 L. Ed. 624, 51 S. Ct. 77

*United States v. Gross*, 103 Fed. 2d 11

*Powers v. United States*, 222 U. S. 303, 56 L. Ed. 448, 32 S. Ct. 281

*Simon v. United States*, 123 Fed. 2d 80, Cert. den. 314 U. S. 694, 86 L. Ed. 555, 62 S. Ct. 411

*Massachusetts v. Smith*, 163 Mass. 411, 40 N. E.  
189

*Gonzales v. Texas*, 272 S. W. 2d 524 .

*Le More v. United States*, 253 Fed. 887, Cert.  
den. 248 U. S. 586, 63 L. Ed. 434, 39 S. Ct.  
184

*Garbo v. United States*, 145 Fed. 2d 966

*United States v. Buckner*, 108 Fed. 2d 921, Cert.  
den. 309 U. S. 609, 84 L. Ed. 1016, 60 S. Ct.  
613

*Shipley v. United States*, 281 Fed. 134, Cert.  
den. 260, U. S. 726, 67 L. Ed. 483, 43 S. Ct.  
89

*Matthews v. United States*, 145 Fed. 2d 823

*Gast v. State*, 232 Ala. 307, 167 So. 554

*Carpenter v. State*, 193 Ala. 51, 69 So. 531

*Davis v. State*, 240 Ala. 365, 199 So. 547

*Burgess v. State*, 256 Ala. 5, 53 So. 2d 568

3. The guaranty of the Fifth Amendment to the Constitution of the United States that no person "shall be compelled in any criminal case to be a witness against himself," is not made effective against state action by the Fourteenth Amendment to the Constitution of the United States.



*Twining vs. New Jersey*, 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14

*Dalko v. Connecticut*, 302 U. S. 319, 82 L. Ed. 708, 58 S. Ct. 149

*Adamson v. California*, 232 U. S. 46, 91 L. Ed. 1903, 67 S. Ct. 1672, 171 A. L. R. 1223

*Snyder v. Massachusetts*, 291 U. S. 97, 78 L. Ed. 674

*Foster v. Illinois*, 332 U. S. 134, 91 L. Ed. 1955, 67 S. Ct. 1716

*Fay v. New York*, 332 U. S. 261, 91 L. Ed. 2043

*Bell v. Hood*, 71 Fed. Supp. 813

*Ex parte Whistler*, 65 Fed. Supp. 40

## VII.

### ARGUMENT

#### A.

In his petition for writ of certiorari to review the judgment of the Supreme Court of Alabama, the petitioner contends that Negroes were systematically excluded from jury service in Dallas County, Alabama, and that because of such exclusion he was denied the due process of law guaranteed him by the Fourteenth Amendment to the Constitution of the

United States in his trial and conviction for the crime of burglary in the first degree. Before he was placed on trial, he filed motions to quash both indictment by the grand jury and the petit jury panel. Alleged systematic exclusion of Negroes from the jury rolls was the basis for these motions. The testimony of a great number of witnesses was heard by the trial court on said motions. The motions were overruled and the trial proceeded. We submit that this ruling was not error and involves no denial of the due process of law guaranteed by the Fourteenth Amendment, for the reason that the proof completely failed to show the systematic exclusion of Negroes from the jury rolls of Dallas County, Alabama.

Mere allegations of discrimination are not sufficient in and of themselves to sustain such a contention and the burden of proof to show an alleged discrimination is on the one making the allegation. *Smith v. Mississippi*, 162 U. S. 592, 40 L. Ed. 1082, 16 S. Ct. 900. This burden was not met by the petitioner.

The evidence showed that prior to the trial of the petitioner in the case at bar, an indictment charging him with the offense here involved, was quashed by the trial court upon the motion of the petitioner. This motion to quash the prior indictment alleged that the indictment was found by a grand jury from which Negroes had been systematically excluded. After this prior indictment was quashed, the jury commissioners of Dallas County,

Alabama, made a great effort to prepare a jury roll and jury box from which Negroes were not systematically excluded. In October, 1953, 1500 names were placed in said jury box and on said jury rolls of which 250 to 300 were Negroes. The venire, which furnished the grand jury and petit jury here involved, was drawn from the jury box after said jury commissioners had completed their work in October, 1953.

The evidence further shows that the jury commissioners of Dallas County, Alabama, in performing their work in October, 1953, adopted a policy not to include those persons, white and Negro, qualified for jury service on the jury roll who were exempt from such service by reason of Title 30, Section 3, Code of Alabama 1940, as amended by Act No. 243, Acts of Alabama 1943, page 497. The evidence does not show that any Negro in Dallas County, Alabama, qualified for jury service and not exempt therefrom, was not included on the jury roll prepared in October, 1953.

As pointed out by the Supreme Court of Alabama in its opinion in the case at bar, there was direct positive evidence showing an effort in good faith to have the Negro race fairly represented on the jury roll prepared in October, 1953. It may be that Negroes were systematically excluded from prior jury rolls in Dallas County, Alabama. However, the indictment and trial here involved are controlled by the jury roll prepared in October, 1953.

In *Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, 77 S. Ct. 397, the defendant contended that discrimination was proved by evidence that thirty per cent of those eligible as jurors were Negroes while only seven per cent of the names in the jury box were names of Negroes. A majority of the court held that no discrimination against Negroes in the selection of the jury had been shown.

In Alabama jury commissioners are required to place on the jury rolls "the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character, and sound judgment." Title 30, Section 21, Code of Alabama 1940, as amended by Act No. 325, General Acts of Alabama 1943, page 309. There are numerous exemptions from this mandate, Title 30, Section 3, Code of Alabama 1940, as amended. The petitioner here presented no testimony as to how many Negroes had been exempt by reason of Title 30, Section 3, Code of Alabama 1940, as amended, or how such exemptions might affect the ratio of Negroes to whites on the jury roll. In the absence of evidence to the contrary, there is a presumption or inference that the officers in charge of the selection and summoning of the jury have performed their duty fairly and justly without discrimination against any eligible class or race. *Tarrance v. Florida*, 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402. No evidence of such discrimination is presented here.

The case of *Cassell v. Texas*, 339 U. S. 282, 94 L. Ed. 839, 70 S. Ct. 629, is no basis for a reversal



of the case at bar. In that case the court found that the jury commissioners chose for the jury roll only those persons they knew and that they knew no eligible Negroes in an area where Negroes made up a large proportion of the population. In the instant case, there is no testimony that the jury commissioners "knew no eligible Negroes." In fact, as pointed out above, great effort was made by the jury commissioners to prepare a jury roll from which Negroes were not systematically excluded before the venire, which formed the grand jury and petit jury in this case, was drawn.

Respondent earnestly contends that the trial court's action in denying the motions to quash the venire and the indictment was rightly affirmed by the Supreme Court of Alabama. As was stated in *Akins v. Texas*, 325 U. S. 398, 401, 89 L. Ed. 1692, 65 S. Ct. 1276:

"While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due process and equal protection under the Fourteenth Amendment, calls for our examination of evidence to determine for ourselves whether a Federal constitutional right has been denied, expressly or in substance and effect, (citing cases) we accord in that examination great respect to the conclusions of the state judiciary. *Pierre v. La.* 306 U. S. 354, 358, 83 L. Ed. 757, 760, 59 S. Ct. 536."



B.

Counsel for petitioner in brief points out that this court always takes into account, in weighing the involuntariness of a confession, the race, lack of education, length of internment, type of crime and frequency, and length of interrogation.

We submit that the evidence in the case at bar falls very short of showing that the confessions introduced into evidence were obtained by threats or coercion in any manner. The evidence shows that the petitioner was always fully advised of his rights and was not misled in any manner by the officers to whom he confessed.

Petitioner further argues that the trial court should have been reversed by the Supreme Court of Alabama for refusing to rule, before the petitioner appeared as a witness, that he could testify "for the purpose of refuting certain allegations by the State, with reference to the voluntary nature of what purports to be certain extra-judicial admissions and for no other purpose," without subjecting himself to general cross examination.

As shown by the cases cited in the second proposition of law contained in Part VI of this brief, both the federal courts and state courts hold that the scope and extent of cross examination of an accused is within the trial court's sound discretion, the exercise of which is not reviewable, except for abuse. This

is certainly the rule in Alabama. See *Burgess v. State*, 256 Ala. 5, 53 So. 2d 568.

In *Carpenter v. State*, 193 Ala. 51, 69 So. 531, the Supreme Court of Alabama held that if a defendant voluntarily takes advantage of the right to testify in his own behalf, in a criminal case, he thereby waives his constitutional protection against answering questions touching the merits of the case which might tend to incriminate him.

In *Gonzales v. Texas*, 272 S. W. 2d 524, the Court of Criminal Appeals of Texas said that when a defendant takes the stand as a witness, he is subject to the same rules as any other witness. He may be contradicted, impeached, discredited, attacked, sustained, bolstered up, made to give evidence against himself, cross-examined as to new matter and treated in every respect as any other witness testifying on behalf of the defendant, except where some statute forbids certain matters to be used against him, such as proof of his conviction on a former trial of the present case, for failure to testify on a former trial or hearing, and the like.

The case at bar does not present, for the determination of this court, a question as to whether certain inquiries might be made of the defendant when he takes the witness stand upon voir dire as to the voluntariness of a confession. The question presented here is whether the defendant has a right before he takes the witness stand, upon such voir dire examination, to limit his ~~cross~~ examination to ques-

tions concerning only the actions and statements made by the petitioner and others at the time and place the confession was made.

A question very similar to the one involved in this case was considered by the United States Court of Appeals, Ninth Circuit, in *Witt v. United States*, 196 Fed. 2d 285. The opinion of the court reads in part as follows:

"The judge heard evidence in the jury's absence concerning the circumstances under which the confession was made. The Bureau agent who had obtained it testified, and appellant likewise was sworn and gave his version of the circumstances. The judge thereupon ruled that the confession was voluntary and allowed its introduction after the agent had again related the circumstances in the presence of the jury. Appellant claims that he was thereafter refused permission to take the stand in the jury's presence for the limited purpose of testifying as to the voluntary aspect of the confession. We do not so understand the record. The court went no further than to suggest that if appellant testified he would subject himself to cross-examination. Appellant was obviously free to take the stand and speak concerning any material matter inquired of him by his counsel. He could not well ask that the court guarantee him in advance that he would be asked no embarrassing questions on cross-examination if he did so. If he had taken the stand and the court had per-

mitted undue latitude in his cross-examination, he would have had something of substance to complain about." (Emphasis supplied)

In the case at bar, there is no way for the court to know what would have been asked the petitioner had he taken the witness stand after the ruling of the court or whether there would have been any cross examination of the petitioner at all. For this reason, we strenuously insist that the question as to whether an accused is entitled to a limited cross examination when he takes the witness stand for the purpose here involved is not properly raised by the record in this case.

For the above reasons, we submit that the Supreme Court of Alabama correctly affirmed the ruling of the trial court here involved and that this Court should not grant a writ of certiorari because of said decision.

C.

This Court has held that a state may regulate the procedure of its courts in accordance with its own conception of policy and fairness, unless it offends some principle of justice ranked as fundamental.

This Court has also held that the privilege against self incrimination is not inherent in the right to a fair trial and is, therefore, not protected by the due process clause of the Fourteenth Amendment to the Constitution of the United States. See *Adamson*



*v. California*, 232 U. S. 46, 91 L. Ed. 1903, 67 S. Ct. 1672, 171 A. L. R. 1223.

For the above reasons, we respectfully submit that the trial court committed no reversible error by refusing to let the petitioner take the stand on voir dire to present evidence that his confession was involuntarily made without subjecting himself to general cross examination.

Since the Fourteenth Amendment does not prevent a state from compelling a witness to testify against himself in a criminal case, the State of Alabama is free to compel such testimony, unless by doing so, some principle of fundamental justice is offended.

Under the facts of the instant case, no principle of fundamental justice was offended by the ruling of the trial court. In Alabama an accused has the right not to testify in a criminal prosecution. However, if he elects to take the witness stand for any purpose, we submit that the State of Alabama may require him to be subjected to general cross examination without violating the due process clause of the Fourteenth Amendment to the Constitution of the United States.



VIII.

CONCLUSION

For the foregoing reasons, we submit that the petitioner was indicted, tried, convicted and sentenced properly, and that the due process clause of the Fourteenth Amendment to the Constitution of the United States was not violated in the trial of the petitioner. Therefore, the writ of certiorari in this case should be denied.

Respectfully submitted,

JOHN PATTERSON

Attorney General of Alabama

ROBERT STRAUB

Assistant Attorney General of Alabama

PAUL T. GISH, JR.

Assistant Attorney General of Alabama  
Attorneys for Appellee

CERTIFICATE

This is to certify that I have this day served a copy of the foregoing brief and argument upon Hon. Peter A. Hall, one of the attorneys for appellant, by placing a copy in the United States mail, postage prepaid, properly addressed to him at 1630 4th Avenue, North, Birmingham, Alabama.

On this \_\_\_\_\_ day of January, 1956.

ROBERT STRAUB

Assistant Attorney General of Alabama

NOV 19 1956

JOHN L. FEY, Clerk

IN THE  
**Supreme Court of the United States**

**OCTOBER TERM, 1956**

No. 53 ~~Miss~~

**WILLIAM EARL FIKES,**

*Petitioner*

v.

**— STATE OF ALABAMA,**

*Respondent.*

**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ALABAMA**

**BRIEF AND ARGUMENT OF RESPONDENT**

**JOHN PATTERSON,**

*Attorney General of Alabama*

**ROBERT STRAUB,**

*Special Assistant*

*Attorney General*

*Counsel for Respondent.*

*Judicial Building  
Montgomery 4, Ala.*

## TABLE OF CONTENTS

Opinion Below .....	1
Questions Presented .....	2
Statutes Involved:	
Title 30, Section 21, Code of Alabama 1940, as Amended .....	3
Title 30, Section 8, Code of Alabama 1940, as Amended .....	4
Title 30, Section 30, Code of Alabama 1940, .....	5
Title 30, Section 38, Code of Alabama 1940, .....	6
Statement of the Facts:	
The Commission of the Crime .....	7
Events Leading to the Confessions .....	8
The Motion to Quash .....	11
Argument:	
I-A, Petitioner's Fundamental Rights were not Violated by the Reception in Evidence of the Confessions made by Him .....	13
I-B, There was no Error in Refusing to Per- mit Petitioner to testify on voir dire Concern- ing the voluntariness of his Confession without submitting himself to any cross-examination.....	17
II. No Evidence of Systematic exclusion of Negroes, because of race, is shown and the Trial Court properly denied the Motions to Quash .....	22

Conclusion:

## CASES CITED

<i>Adamson v. California</i> , 332 U. S. 46, 91 L. Ed. 1903, 67 S. Ct. 1672.....	17, 18, 19
<i>Alford v. United States</i> , 282 U. S. 687, 75 L. Ed. 624, 51 S. Ct. 77.....	17, 20
<i>Akins v. Texas</i> , 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1776.....	22, 23
<i>Brown v. Allen</i> , 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397.....	13, 15, 22
<i>Brown v. State</i> , 243 Ala. 529, 10 So. 2d 855.....	19
<i>Carpenter v. State</i> , 193 Ala. 51, 69 So. 531.....	19
<i>Cassell v. Texas</i> , 339 U. S. 282, 94 L. Ed. 839, 70 S. Ct. 629.....	26
<i>Commonwealth v. Smith</i> , 163 Mass. 411, 40 N.E. 189.....	18
<i>Fay v. New York</i> , 332 U. S. 261, 67 S. Ct. 1613.....	18, 19, 22, 26
<i>Foster v. Illinois</i> , 332 U. S. 184, 91 L. Ed. 1955, 67 S. Ct. 1716.....	17, 18, 19
<i>Gallegos v. Nebraska</i> , 342 U. S. 55, 96 L. Ed. 86, 72 S. Ct. 141.....	13, 15
<i>Gast v. State</i> , 232 Ala. 307, 167 So. 554.....	19
<i>Gonzales v. Texas</i> , 272 S. W. 2d 524.....	18
<i>Ingram v. State</i> , 34 Ala. App. 597, 42 So. 2d 30.....	15
<i>Kelly v. State</i> , 160 Ala. 48, 49 So. 535.....	19

<i>LeMore v. United States</i> , 253 Fed. 887, cert. denied 248 U. S. 586, 63 L. Ed. 434, 39 S. Ct. 184.....	18, 20
<i>Lisbena v. California</i> , 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280.....	14, 16
<i>Palko v. Connecticut</i> , 302 U. S. 319, 82 L. Ed. 288, 58 S. Ct. 149.....	17, 18, 19
<i>Powers v. United States</i> , 223 U. S. 303, 56 L. Ed. 448, 32 S. Ct. 281.....	17
<i>Raffel v. United States</i> , 271 U. S. 494, 70 L. Ed. 1054, 46 S. Ct. 566.....	17, 20
<i>Simon v. United States</i> , 123 Fed. 2d 80, cert. denied 314 U. S. 694, 86 L. Ed. 555, 62 S. Ct. 411.....	18
<i>Snyder v. Massachusetts</i> , 291 U. S. 97, 78 L. Ed. 674.....	17, 19
<i>Stein v. New York</i> , 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077.....	13, 15, 17, 21
<i>Stroble v. California</i> , 343 U. S. 181, 96 L. Ed. 872, 72 S. Ct. 599.....	14
<i>Tarrance v. Florida</i> , 188 U. S. 519; 47 L. Ed. 572, 23 S. Ct. 402.....	22, 23
<i>Thomas v. Texas</i> , 212 U. S. 278, 53 L. Ed. 512, 29 S. Ct. 383.....	22, 25
<i>Turner v. Commonwealth</i> , 338 U. S. 62, 93 L. Ed. 1810.....	16
<i>Twining v. New Jersey</i> , 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14.....	17, 18, 19
<i>United States v. Gross</i> , 103 Fed. 2d 11.....	17



*Watts v. Indiana*, 338 U. S. 49, 93 L. Ed. 1081,  
69 S. Ct. 1347..... 16

*Witt v. United States*, 196 Fed. 2d 285, cert. denied  
344 U. S. 827, 97 L. Ed. 644, 73 S. Ct. 28..... 17, 19

IN THE

**Supreme Court of the United States**

---

**OCTOBER TERM, 1956**

---

---

**BRIEF AND ARGUMENT  
ON THE MERITS**

---

**BRIEF AND ARGUMENT OF RESPONDENT**

**A.**

**OPINION OF THE COURT BELOW**

The opinion of the Supreme Court of Alabama, is reported as *William Earl Fikes v. State of Alabama*,

**No. 53 Misc.**

---

**WILLIAM EARL FIKES,**

*Petitioner*

*v.*

**STATE OF ALABAMA,**

*Respondent.*

---

**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ALABAMA**

81 So. 2d 303, and is found at page 337, of the printed record.

**B.**

**QUESTIONS PRESENTED**

**I-A.**

Whether the introduction in evidence of two confessions made during ten days of incarceration, when he was not denied the right to counsel nor visitation by members of his family, was advised of his rights and was questioned intermittently, without threats, promises, or abuse, denied the petitioner due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

**I-B.**

Whether under these circumstances due process was denied when petitioner offered to testify on *voir dire*, during the State's case, solely on the question of involuntariness of the confessions and the court held that cross-examination would not be limited.

**II.**

Whether petitioner was denied rights guaranteed by the Fourteenth Amendment when indicted in a county where Negroes comprise approximately 50 percent of the population, and no Negro has ever served on a grand jury; and where, in an attempt to comply with the law, the jury commissioners revised the jury roll prior to petitioner's indictment, and included between 250 and 300 Negroes and approximately 1500 whites,

using the same method of selection in each case.

C.

Title 30, Section 21, Code of Alabama 1940, as amended by Act No. 325, Acts of Alabama 1943, page 309:

**"AN ACT**

**"To amend Section 21 of Title 30 of the Code of Alabama of 1940.**

**"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:**

**"Section 1. That Section 21 of Title 30 of the Code of Alabama of 1940 and the same is hereby amended so as to read as follows: 'The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are genereally (sic) reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ~~ever~~ been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a free holder or house holder his name may be placed on the jury roll and in the jury box. No person over the age of sixty five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to**

do so.'

"Section 2. This Act shall be effective immediately.

"Approved July 1, 1943."

Title 30, Section 3, Code of Alabama 1940, as amended by Act No. 243, Acts of Alabama 1943, page 197:

## "AN ACT

"To amend Section 3 of Title 30 of the Code of 1940.

"Be it Enacted by the Legislature of Alabama:

"Section 1. That Section 3 of Title 30 of Code of Alabama 1940 be amended so as to read as follows:

Section 3 (8605) (7245) (4986) 4301) (4734) (4064) (514) **PERSONS EXEMPT FROM**

**JURY DUTY.**—The following persons are exempt from jury duty, unless by their own consent: Judges of the several courts; attorneys at law during the time they practice their profession; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of the courts and county commissioners; regularly licensed and practicing physicians; dentists; pharmacists; optometrists; teachers while actually engaged in teaching; actuaries while actually engaged in their profession; officers and regularly licensed engineers of any board plying the waters of this state; passenger bus driver-operators, and driver-operators of motor-vehicles hauling freight for hire under the supervision of the Alabama Public Service Commission; railroad engineers, locomotive firemen;



conductors, train dispatchers, bus dispatchers, railroad station agents, and telegraph operators, when actually in sole charge of an office; newspaper reporters while engaged in the discharge of their duties as such; regularly licensed embalmers while actually engaged in their profession; radio broadcasting engineers and announcers when engaged in the regular performance of their duties; the superintendents, physicians, and all regular employees of the Bryce hospital in Tuscaloosa County and the Searcy Hospital in Mobile County; officers and enlisted men of the national guard and naval militia of Alabama, during their terms of service; and convict and prison guards while engaged in the discharge of their duties as such.

"Approved June 28, 1943."

Title 30, Section 30, Code of Alabama 1940:

"§ 30. DRAWING GRAND AND PETIT JURIES FROM JURY BOX.—At any session of a court requiring jurors for the next session, the judge, or where there are more than one, then any one of the judges of the court shall draw from the jury box in open court the names of not less than fifty persons to supply the grand jury for such session and petit juries for the first week of such session of the court, or if a grand jury is not needed for the session at least thirty persons, and as many more persons as may be needed for jury service in courts having more than one division for the first week, and after each name is drawn it shall not be returned to the jury box, and there shall be no selection of names, and must seal up the names thus drawn, and

retain possession thereof, without disclosing who are drawn until twenty days before the first day of the session of the court for which the jurors are to serve, when he shall forward these names by mail, or express, or hand the same to the clerk of the court who shall thereupon open the package, make a list of the names drawn, showing the day on which the jurors shall appear and in what court they shall serve, and entering opposite every name the occupation of the person, his place of business, and of residence, and issue a venire containing said names and information to the sheriff who shall forthwith summon the persons named thereon to appear and serve as jurors."

Title 30, Section 38, Code of Alabama 1940:

"§ 38. HEARING OF EXCUSES; EMPANELING AND ORGANIZING. GRAND AND PETIT JURIES.—The court shall require all persons named in the venire to be called, and shall then hear all excuses and claims of exemptions and disqualifications, and after passing upon all of the excuses or claims, shall cause the names of all jurors in attendance upon the court on that day, and who have not been excused by the court, to be written on separate slips of paper, or cards and placed in a hat or box, and thereupon the judge of the court must, in open court, draw from the hat or box, at sessions requiring grand juries, the names of eighteen jurors who shall be empaneled and sworn as the grand jury for the sessions of the court, provided that only one grand jury is authorized by law for that session; but if more than one grand jury is authorized by law for such session, then said jurors, so empaneled, shall be the first grand jury for said ses-

sion, and any subsequent grand jury, or grand juries for such session as is now or may hereafter be authorized by law must be drawn, summoned, sworn and empaneled, as provided in this chapter during the said session, and the venire for same may contain such number of names as the judge may deem necessary. The judge must then proceed to draw from the hat or box, the names of twelve jurors who shall be empaneled and sworn as petit jury no. 1, and in like manner the judge must draw and empanel and swear petit jury no. 2, and when necessary, as many more jurors as the judge or judges of the court may deem proper, all of whom shall serve as petit jurors for that week, unless discharged sooner by the court, and may be required to serve till any case on trial is determined. If petit juries are needed for any week or weeks of the sessions, after the first week, the judge or any two judges of said court, if there is more than one judge, shall, in like manner at such times as to him or them may seem best, draw from the jury box such number of names, not less than thirty, for each of such subsequent weeks, as will in the discretion of such judge or judges, be sufficient for the week for which same are drawn."

#### D.

### STATEMENT OF THE FACTS

#### THE COMMISSION OF THE CRIME

Mrs. Jean Heinz Rockwell, was in bed, on April 24, 1953, alone except for her two children who were in her apartment with her (R. p. 181). The apartment was locked when she went to bed, (R. p. 183). She waked

up about 10:15 or 10:20 P. M., to find a Negro intruder, slight of build and in his twenties, sitting on her (R. p. 183). He held a knife at her throat and threatened to kill her if she struggled with him (R. p. 184). She managed to get off the bed and struggled with him through the hall and into the living room, where they fell to the floor. When she screamed he tried to quiet her, threatened her again and told her to straighten out (R. p. 185). She managed to get the knife away from him and he ran out the back door. He was dressed in a white undershirt and blue jeans and had a towel draped over his head (R. p. 186).

The confessions of the petitioner (R. pp. 232 et seq. and 259 et seq.) bear out the testimony of Mrs. Rockwell, as to the method of entry and the attack.

The petitioner offered testimony by his employer, concerning his good reputation and his working hours (R. p. 273). He normally worked until 9:00 or 10:00 O'clock, P. M. (R. p. 273). The manager of the filling station, where petitioner worked, testified that petitioner's quitting time was 8:30 P. M., but he often stayed until the close of business (R. p. 277). There was no testimony as to the time he left work on the night the crime was committed.

Three doctors testified as to the insanity of the petitioner (R. pp. 282, 287, 292). Their conclusions were reached after only two hours of examination (R. pp. 286, 291, 294).

### **EVENTS LEADING TO THE CONFESSIONS**

The petitioner was seen wandering around in an alley in a white neighborhood about midnight or early Sunday

morning, May 17, 1953 (R. pp. 195, 269, 270). Arresting officers were called to go to a certain filling station where they found the petitioner on the back seat of a car containing three white men (R. p. 267). He was taken to the city jail where he was booked on an open charge of investigation and placed in jail (R. pp. 194, 268).

From about 10:00 O'clock until 12:00 O'clock on Sunday morning, petitioner was questioned intermittently. He was also questioned intermittently for two and one-half or three hours on Sunday afternoon. During this time, petitioner was driven around the city in an automobile (R. p. 211). During a part of the conversations on Sunday, petitioner requested the opportunity to talk to the Sheriff of Perry County, Alabama, his home county. The sheriff was notified, came to Selma, Alabama, and rode around town with petitioner (R. pp. 205, 216).

On Monday, petitioner's employer came to visit him at his request (R. p. 205). The Captain of the Police made a warrant on Monday (R. p. 195). This warrant was served on the petitioner (R. p. 200). According to the testimony, this charge was not placed on the Recorder's docket. It was not customary to enter a charge on the Recorder's docket unless the suspect should demand a preliminary hearing (R. pp. 196, 224). Neither is a charge docketed if the suspect makes a bond to the grand jury (R. pp. 205, 224). Only those cases which are to come before the Recorder are put on that docket (R. p. 221). Petitioner was advised of his rights by Captain Baker (R. p. 196), but he did not request a preliminary hearing (R. pp. 205, 224).

It was also shown that there was nothing unusual in



the fact that the warrant was not numbered (R. pp. 197, 222, 224).

The petitioner was questioned for one and one-half or two hours beginning about nine O'clock, Monday morning (R. p. 211). In the afternoon he was taken to Kilby prison for protection (R. p. 207). There was only general conversation during the trip to Kilby prison (R. p. 212), and petitioner was admitted on the order of Circuit Judge W. E. Callen (R. p. 210). Petitioner was questioned some that afternoon and for a little while after supper (R. p. 212).

Petitioner was placed in segregation during his stay at Kilby. His cell had a comfortable bed and all conveniences but he was not allowed to mingle with the other prisoners (R. p. 323). This is customary in the case of prisoners held for other authorities (R. p. 324).

Petitioner was not questioned again until Wednesday (R. pp. 201, 212). No questioning took place Thursday morning but petitioner was questioned twice in the afternoon (R. pp. 214, 215). A tape recording of petitioner's conversation was made on Thursday, in the Chaplain's office at Kilby. No threats, promises or rewards were made to petitioner nor was any violence or abuse used against him (R. p. 191), and no one was armed. He was advised that anything he said would be recorded (R. p. 205). In this recorded statement he confessed (R. pp. 232 through 236).

No conversations were had with petitioner until Saturday, when the officers talked to him for fifteen or twenty minutes in the morning and about three and one-half hours in the afternoon (R. p. 215).

Petitioner's father visited with him on Sunday (R. p.

304). On Tuesday he made another confession, during an hour's questioning after lunch (R. pp. 215, 259). Proper predicate was laid for the introduction of this confession (R. p. 239). At no time during his stay at Kilby prison was petitioner denied food or water, or abused in any way (R. p. 322), and the longest period of questioning was not more than three and one-half hours (R. p. 243).

An attorney who came to see petitioner while he was at Kilby was not permitted to see him because he admitted he had not been retained in the case (R. p. 324). Petitioner's father had not authorized any representatives (R. p. 305). Lawyers are not permitted to solicit employment within the prison (R. p. 331).

It was not established whether this attorney had attempted his visit before or after the confessions (R. pp. 324, 325). Counsel appointed by the court were permitted to see petitioner (R. pp. 325, 332).

### THE MOTION TO QUASH

Although the testimony showed that no Negroes had served on grand or petit juries in Dallas County, Alabama, there was no evidence that Negroes are presently excluded solely because of their race or that they were so excluded when the petitioner was indicted. It was shown that Negroes were often found on the venire for both grand and petit juries (R. pp. 29, 30, 38, 40, 41, 42, 46, 51, 52, 55, 57, 59, 60, 64 and 65.) They were usually struck but this was never done under any sort of agreement between defense attorneys and the solicitor of the court (R. pp. 36, 38, 52, 46 and 48). In Alabama a defendant has two strikes to the State's

one.

There were, in fact, five Negroes on the venire of the grand jury which indicted petitioner, after two had been excused, one on account of age and the other because of the previous conviction of a felony. Their names were placed in the hat along with the others but were not drawn (R. pp. 67 through 70). There were also several Negroes on the venire from which the petit jury was struck (R. p. 180).

It was shown that the jury commission had revised the jury roll and box, shortly before the petitioner's indictment (R. pp. 72, 73). This was done at the time required by law (R. p. 108).

The commission obtained the names of Negroes in the same manner as in the case of whites (R. p. 90). The commission used personal contact, registration lists, qualified voter lists, telephone directory and the city directory (R. pp. 71, 78, 79, 88). Acquaintances of the commissioners were asked to submit the names of qualified jurors (R. pp. 90, 100).

Some 250 or 300 names of Negroes were placed on the jury roll (R. pp. 80, 87), along with the names of about 1500 whites (R. pp. 82, 88). The names of these Negroes were placed on the rolls because they were thought to be qualified jurors and because the commission sought to rectify any previous omissions (R. pp. 80, 81). A diligent effort was made to find qualified Negroes as well as whites (R. p. 130), but persons who could claim exemptions under the law were not knowingly included (R. pp. 111, 112). All names put on the jury roll were also put in the jury box (R. pp. 94, 96).

There is no indication on the jury roll or in the jury box whether a name is that of a white man or a Negro (R. p. 82). Neither is there such indication on the venire (R. pp. 36, 39). Therefore, by merely examining the roll in court, the commissioners were only able to positively identify between fifty (R. p. 160) and 198 (R. p. 128) Negroes.

It was shown that in drawing a grand jury, the names of the 60 to 80 persons drawn for jury duty are placed in a hat and 18 are drawn for the grand jury (R. p. 59). In conducting such drawing, no exclusion was ever practiced, and no names drawn on the venire were ever put aside (R. p. 116).

It was also shown that approximately 90 percent of the criminal cases in the courts of Dallas County, involved Negroes (R. p. 125), and that a great many of them lived in adultery (R. p. 124).

## E.

## ARGUMENT

### I-A.

**PETITIONER'S FUNDAMENTAL RIGHTS WERE NOT VIOLATED BY THE RECEP-TION IN EVIDENCE OF THE CONFES-SIONS MADE BY HIM.**

*Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397;

*Gallegos v. Nebraska*, 342 U. S. 55, 96 L. Ed. 86, 72 S. Ct. 141;

*Stein v. New York*, 346 U. S. 156, 97 L. Ed. 1522,

73 S. Ct. 1077;

*Stroble v. California*, 343 U. S. 181, 96 L. Ed. 872,  
72 S. Ct. 599;

*Lisbena v. California*, 314 U. S. 219, 86 L. Ed. 166,  
62 S. Ct. 280;

*Ingram v. State*, 34 Ala. App. 597, 42 So. 2d 30.

The petitioner contends that the evidence presented in the trial court showed his confession to be the result of psychological coercion. He bases this on testimony concerning the detention and questioning in Kilby prison. It will be noted from the detailed extract of the record, there was absolutely no evidence of physical abuse. Petitioner was placed in Kilby prison as a protective measure. He was advised of his rights and was permitted to see those persons he wished to see, namely, the sheriff of his home county and his employer. The questioning was not incessant and he was not denied food, water or sleep. Between confessions he was visited by his father. The only attempt by an attorney to see him was by an attorney who admitted that he did not represent the petitioner. It was shown that no one was armed at the time the confessions were obtained. It is questionable whether or not he was brought before a magistrate, although testimony shows that he was in prison on an order of the Circuit Judge of Dallas County, Alabama.

In Alabama, the failure of an officer to comply with the statutory technicalities of properly processing an arrest does not render involuntary a confession other-



wise shown to be voluntary. See *Ingram v. State*.<sup>1</sup> In *Stein v. New York*,<sup>2</sup> the accused prisoners were not taken before a magistrate as is required by New York law. This Court held in that case that this was a fact relevant to be considered but that it of itself did not require the exclusion of confession obtained at that time.

In *Brown v. Allen*,<sup>3</sup> the accused, an illiterate, was held for five days before being charged. He was given no preliminary hearing for eighteen days after his arrest and no counsel was provided. The confession was obtained prior to the preliminary hearing and the appointment of counsel. The court stated that there was no evidence of physical coercion or prolonged questioning. There were no promises of reward and he was not denied counsel of his choice. This Court held as follows: "Mere detention and police examination in private of one in official state custody do not render involuntary the statements or confessions made by the person so detained."

In the instant case, there was no prolonged questioning. The testimony shows that the petitioner was questioned for three and one-half hours at most, at any one time. He was given ample time for sleeping and eating.

In *Gallegos v. Nebraska*,<sup>4</sup> a thirty-eight year old Mexican farm hand, who could neither speak nor write English was held without charge or arraignment for twenty-three days and questioned at length during that time. Again this Court held that such fact could be considered but would not render the confession involun-

<sup>1</sup> *Ingram v. State*, 34 Ala. App. 597, 42 So. 2d 30.

<sup>2</sup> *Stein v. New York*, 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077.

<sup>3</sup> *Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397.

<sup>4</sup> *Gallegos v. Nebraska*, 342 U. S. 55, 96 L. Ed. 86, 72 S. Ct. 141.

tary. We also call this Honorable Court's attention to *Lisbena v. California*,<sup>5</sup> as to the issue of prolonged questioning.

In *Turner v. Commonwealth*,<sup>6</sup> relied upon by petitioner, it appeared that whenever any of the officers involved in the case had any free time he would question the defendant. The defendant, in that case, was not informed of his rights; he was not permitted to see anyone and was falsely told that others had "opened up" on him. Such was not the case here. It might be added that the questioning officers, in the case at bar, had to drive about fifty or fifty-five miles, whenever they wanted to question petitioner.

In *Watts v. Indiana*,<sup>7</sup> the relay questioning procedure was continued until 3:00 O'clock in the morning. The accused, in that case, was denied food and sleep and placed in a cell where he had no place to sit or eat, except on the floor. He was not advised of his rights and was not permitted to see friends or family. For these reasons, *Turner v. Commonwealth*, supra, and *Watts v. Indiana*, supra, are inapplicable here. We contend that the testimony presented, does not lead to the conclusion that the confessions were obtained under such circumstances, as would show that lack of fundamental justice required by the Fourteenth Amendment.

---

<sup>5</sup> *Lisbena v. California*, 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280.

<sup>6</sup> *Turner v. Commonwealth*, 338 U. S. 62, 93 L. Ed. 1810.

<sup>7</sup> *Watts v. Indiana*, 338 U. S. 49, 93 L. Ed. 1081, 69 S. Ct. 1347.

## I-B.

**THERE WAS NO ERROR IN REFUSING TO PERMIT PETITIONER TO TESTIFY ON VOIR DIRE CONCERNING THE VOLUNTARINESS OF HIS CONFESSION WITHOUT SUBMITTING HIMSELF TO ANY CROSS-EXAMINATION.**

*Twining v. New Jersey*, 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14;

*Palko v. Connecticut*, 302 U. S. 319, 82 L. Ed. 288, 58 S. Ct. 149;

*Adamson v. California*, 332 U. S. 46, 91 L. Ed. 1903, 67 S. Ct. 1672, 171 A. L. R. 1223;

*Snyder v. Massachusetts*, 291 U. S. 97, 78 L. Ed. 674;

*Foster v. Illinois*, 332 U. S. 134, 91 L. Ed. 1955, 67 S. Ct. 1716;

*Witt v. United States*, 196 Fed. 2d 285, cert. denied 344 U. S. 827, 97 L. Ed. 644, 73 S. Ct. 28;

*Stein v. New York*, 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077;

*Alford v. United States*, 282 U. S. 687, 75 L. Ed. 624, 51 S. Ct. 77;

*Raffel v. United States*, 271 U. S. 494, 70 L. Ed. 1054, 46 S. Ct. 566;

*United States v. Gross*, 103 Fed. 2d 11;

*Powers v. United States*, 223 U. S. 303, 56 L. Ed. 448, 32 S. Ct. 281;

*Simon v. United States*, 123 Fed. 2d 80, cert. denied 314 U. S. 694, 86 L. Ed. 555, 62 S. Ct. 411;

*Commonwealth v. Smith*, 163 Mass. 411, 40 N. E. 189;

*Gonzales v. Texas*, 272 S. W. 2d 524;

*Lemore v. United States*, 253 Fed. 887, cert. denied 248 U. S. 586, 63 L. Ed. 434, 39 S. Ct. 184;

*Fay v. New York*, 332 U. S. 261, 91 L. Ed. 2043.

This Court has often held that the guarantees of the first eight amendments to the Constitution of the United States are not made effective against state action by either the privileges and immunities clause or the due process clause of the Fourteenth Amendment to the Constitution of the United States.<sup>8</sup> This is true as to the protection against double jeopardy,<sup>9</sup> the right to counsel,<sup>10</sup> trial by jury,<sup>11</sup> and the privilege against self-incrimination.<sup>12</sup> The Fourteenth Amendment only comes into play in cases covered by the first eight amendments when the laws of a state deny an accused some element of fundamental justice.<sup>13</sup>

In Alabama, an accused may elect to remain silent or he may testify in his own behalf.<sup>14</sup> The Alabama Supreme Court has held that if he elects to testify he cannot restrict the nature of relevant testimony he proposes to give.<sup>15</sup> It has been so held again in the

---

<sup>8</sup> *Twining v. New Jersey*, 211 U. S. 78, 53 L. Ed. 97, 29 S. Ct. 14;  
*Palko v. Connecticut*, 302 U. S. 319, 82 L. Ed. 288, 58 S. Ct. 149;  
*Adamson v. California*, 332 U. S. 46, 91 L. Ed. 1903, 67 S. Ct. 1672.

<sup>9</sup> *Palko v. Connecticut*, *supra*.

<sup>10</sup> *Foster v. Illinois*, 332 U. S. 134, 91 L. Ed. 1955, 67 S. Ct. 1716.

instant case.<sup>16</sup> We submit that such a construction of our constitutional provisions, the declared law of the State of Alabama, does not deprive the petitioner of any element of fundamental justice required by the Fourteenth Amendment.

We turn now to the case of *Witt v. United States*.<sup>17</sup> There the trial judge heard evidence concerning the voluntary character of the confession in the absence of the jury. He then ruled that the confession was voluntary. A witness for the government then testified to the statements in the presence of the jury. The defendant complained that he was not permitted the opportunity of testifying as to the voluntary aspect of his confession.

The Ninth Circuit Court of Appeals, held as follows:

"Appellant claims that he was thereafter refused permission to take the stand in the jury's presence for the limited purpose of testifying as to the voluntary aspect of the confession. We do not so understand the record. *The court went no further than to suggest that if appellant testified he would subject himself to cross-examination.* Appellant was obviously free to take the stand and speak concerning any material

---

<sup>11</sup> *Fay v. New York*, 332 U. S. 261, 91 L. Ed. 2043, 67 S. Ct. 1613;  
*Snyder v. Massachusetts*, 291 U. S. 97, 78 L. Ed. 674.

<sup>12</sup> *Twining v. New Jersey*, *supra*;  
*Adamson v. California*, *supra*.

<sup>13</sup> *Foster v. Illinois*, *supra*;  
*Palko v. Connecticut*, *supra*.

<sup>14</sup> Section 6, Constitution of Alabama 1901.

<sup>15</sup> *Kelly v. State*, 160 Ala. 48, 49 So. 535;  
*Carpenter v. State*, 193, Ala. 51, 69 So. 531;  
*Gast v. State*, 232 Ala. 307, 167 So. 554;  
*Brown v. State*, 243 Ala. 529, 10 So. 2d 855.

<sup>16</sup> See Record page 350.

<sup>17</sup> *Witt v. United States*, 196 Fed. 2d 285.



matter inquired of him by his counsel. He could not well ask that the court guarantee him in advance that he would be asked no embarrassing questions on cross-examination if he did so. *If he had taken the stand and the court had permitted undue latitude in his cross-examination, he would have had something of substance to complain about.*" (Emphasis supplied.)

So it is here, the trial court informed the petitioner, in effect, that if he took the stand to testify on voir dire, he would submit himself to cross-examination.<sup>18</sup> Certainly, on a coercion issue the credibility of all witnesses is an important fact. If the defendant takes the stand he does so as any other witness.<sup>19</sup> Should the state be denied the opportunity of impeaching his credibility or of showing prior inconsistent statements? We submit that such is not the case. It was never intended that a defendant be given the benefits of remaining silent and the benefits of testifying at one and the same time.

The extent of cross-examination is within the sound discretion of the trial court and the exercise of that discretion will not be overturned except where abuse is shown.<sup>20</sup> If the trial court had permitted cross-examination of the petitioner, which was beyond the legitimate scope, then petitioner might have had something about which to complain. Under the circumstances here, however, petitioner would attempt to shield himself from all embarrassing questions of whatever nature.

We will next call this Honorable Court's attention to

---

<sup>18</sup> Record pages 230, 231.

<sup>19</sup> *Raffel v. United States*, 271 U. S. 494, 70 L. Ed. 1054, 46 S. Ct. 566.

<sup>20</sup> *LeMore v. United States*, 253 Fed. 887, cert. denied 248 U. S. 586, 63 L. Ed. 434, 39 S. Ct. 184;

*Alford v. United States*, 282 U. S. 687, 75 L. Ed. 624, 51 S. Ct. 77.

*Stein v. New York.*<sup>21</sup> In that case the defendants complained that they could not take the stand to testify to coercion in obtaining their confession without submitting themselves to general cross-examination. Recognizing the rule that the extent of cross-examination is largely within the discretion of the trial court, the Supreme Court noted that the defendants made no offer to testify, no matter how restricted the cross-examination might have been.

The court goes further, however, and states as follows:

"Petitioners' attack is so unbounded and unqualified that it could prevail only if the Fourteenth Amendment were construed to allow them to testify to their coercion by the police, shielded from any cross examination whatever. If they had given such testimony, it would have been in direct conflict with that of the police, and the decision would depend on which was believable: Certainly the Constitution does not prohibit tests of credibility which American law uniformly applied to witnesses. If in open court, free from violence or threat of it, defendants had been obliged to admit incriminating facts, it might bear on the credibility of their claim that the same facts were admitted to the police only in response to beating. And if they became witnesses, does the Constitution compel the State to forego attack on their credibility

<sup>21</sup> *Stein v. New York*, 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077.

by showing former convictions? . . . — In trial of a coercion issue, as of every other issue, when the prosecution has made a case to go to the jury, an accused must choose between the disadvantage from silence and that from testifying. The Constitution safeguards the right of a defendant to remain silent; it does not assure him he may remain silent and still enjoy the advantages that might have resulted from testifying. We cannot say that petitioners have been denied a fair hearing of the coercion charge."

There as here, the accused sought to avail himself of two safeguards, one of remaining silent and the other of testifying. The fundamental justice required by the Fourteenth Amendment does not require so great a concession to any accused.

## II.

NO EVIDENCE OF SYSTEMATIC EXCLUSION OF NEGROES, BECAUSE OF RACE, IS SHOWN AND THE TRIAL COURT PROPERLY DENIED THE MOTIONS TO QUASH.

*Tarrance v. Florida*, 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402;

*Akins v. Texas*, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276;

*Thomas v. Texas*, 212 U. S. 278, 53 L. Ed. 512, 29 S. Ct. 383;

*Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397;

*Fay v. New York*, 332 U. S. 261, 91 L. Ed. 2043.

The petitioner filed a motion to quash the indictment (R. p. 4) and a motion to quash the venire (R. p. 8). The grounds of these motions, variously stated, were that Negroes were systematically excluded from the jury rolls of Dallas County, Alabama, solely by reason of their race.

Discrimination of this type is not presumed but must be proved or admitted,<sup>22</sup> and the burden is placed upon the petitioner to establish such discrimination as would warrant this Court's reversal of the Supreme Court of Alabama.<sup>23</sup> It has often been held that fairness in selection does not require proportional representation.<sup>24</sup>

We call this Honorable Court's attention to the detailed testimony concerning the method of selecting jurors to fill the jury box from which names were drawn for petitioner's grand and petit juries. We submit that the jury commissioners of Dallas County, Alabama, were honestly and sincerely attempting to do their duty as required by the laws of Alabama and the United States. In the case of *Akins v. Texas*, supra, the jury commissioners increased the number of Negro jurors on the various jury panels after several cases had been reversed because of systematic exclusion of Negroes. This Court, in reviewing the *Akins* case, supra, remarked several times that the commissioners were obviously trying to follow the mandate of the Supreme Court of Texas and the Supreme Court of the United States. In examining the *Akins* case, supra, this Court, stated as follows:

---

<sup>22</sup> *Tarrance v. Florida*, 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402.

<sup>23</sup> *Akins vs. Texas*, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276.

<sup>24</sup> *Akins v. Texas*, supra.

"While our duty, in reversing a conviction upon a complaint that the procedure through which it was obtained violates due process and equal protection under the Fourteenth Amendment, calls for our examination of evidence to determine for ourselves whether a Federal constitutional right has been denied, expressly or in substance and effect, . . . we accord in that examination great respect to the conclusions of the state judiciary . . . . That respect leads us to accept the conclusion of the trier of fact on disputed issues 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.'"

The Circuit Court of Dallas County, Alabama, having heard the testimony concerning the alleged discrimination overruled the motions to quash. The Supreme Court of Alabama, reviewing the evidence, held as follows:

"The indictment and trial here involved are controlled by the roll then made. The prior habit of the commissioners in respect to negroes on jury rolls can only serve to shed light on their conduct in making up the last jury roll. But that is not sufficient to overcome the direct positive evidence showing an effort in good faith to have the negro race fairly represented on the jury roll by negroes who are qualified and not exempt after indictments have been quashed for such previous failure. It is not appropriate to say that they are entitled to be represented in the same proportion as the whites are represented unless their qualifications are in the same proportion. That does not appear. The comparison without that is not an



accurate guide for a determination of the question. We think the trial court (fol. 814) properly overruled the motion to quash the indictment and the motion to quash the venire for use on the trial of this cause because, we think, the evidence fails to show that the jury commission systematically omitted qualified and not exempt negroes from the jury roll because they were negroes or discriminated against them on that account, and thereby deprived defendant of due process or the equal protection of the law. We think, therefore, there was no reversible error in that respect." (R. pp. 345, 346.)

The evidence supporting the conclusion of the Circuit Court of Dallas County, Alabama, and the Supreme Court of Alabama, is not so lacking that it works the fundamental unfairness which is condemned by this Court. We further call the attention of this Honorable Court to *Thomas v. Texas*,<sup>25</sup> where the Supreme Court of the United States gave great weight to the following statement by the Court of Criminal Appeals of Texas:

"It may be that the jury commissioners did not give the Negro race a full pro rata with the white race in the selection of the grand and petit juries in this case; still this would not be evidence of discrimination. If they fairly and honestly endeavored to discharge their duty and did not in fact discriminate against the Negro race in the selection of the jury lists, then the Constitution of the United States has not been violated . . ."

This Court should not consider earlier incidents not connected with these juries or trials that suggest past discriminations.

---

<sup>25</sup> *Thomas v. Texas*, 212 U. S. 278, 53 L. Ed. 512, 29 S. Ct. 383.

*Cassell v. Texas*,<sup>26</sup> is not applicable here." In that case the commissioners selected only jurors whom they knew and testified that they knew no eligible Negroes. In the instant case, the commissioners requested and received lists of names from which they could get qualified jurors, whether they knew them personally or not. Also the commissioners in the *Cassell* case, supra, hand-picked the sixteen jurors from which the judge selected twelve. On each list of sixteen, the name of one Negro was placed. The concurring opinion of Mr. Justice Frankfurter, points up the fact that the grand jury was the personal choice of commissioners. In the case at bar, the method of selection is, of course, different. As previously outlined some eighty jurors, both whites and colored, were drawn by lot from the box, placed in a hat, and eighteen names drawn for the grand jury. Since no identifying marks are used in Alabama on the cards in the jury box, the inclusion or exclusion of Negroes, on the venire is not by design but by chance.

It might further be pointed out that petitioner failed to show the number of persons within the statutory age group who were otherwise ineligible for jury duty, thereby rendering insufficient the census statistics relating to race in Alabama.<sup>27</sup>

In the instant case, the petitioner is found in the position of arguing against himself. He first complained that he was denied his constitutional rights because Negroes were systematically excluded because of race from the grand jury which indicted him. The trial court sustained his complaint and quashed the in-

<sup>26</sup> *Cassell v. Texas*, 339 U. S. 282, 94 L. Ed. 839, 70 S. Ct. 629.

<sup>27</sup> *Fay v. New York*, 332 U. S. 261, 91 L. Ed. 2043, 67 S. Ct. 1613.

dietment. Thereafter, in accordance with the law a new jury roll was prepared and the names of a substantial number of Negroes were placed in the box. Petitioner now challenges the indictment because the commissioners knew that they were the names of Negroes when they placed them on the roll. There appears to be no way of satisfying the petitioner in this matter. Under the Alabama statutes regarding the compilation of the jury rolls, which statutes are not attacked here, the commissioners are almost certain to know the race of prospective jurors. A certain amount of personal knowledge is necessary to determine the prospect's qualifications.

No token representation is attempted here. Rather, the commissioner used the same standards in selecting all jurors, regardless of race. No systematic exclusion of Negroes, because of race, is indicated either by the testimony or by inference.

## CONCLUSION

The testimony fails to show that the confessions made by petitioner resulted from coercion. There was no showing that the statements were anything but voluntary. The trial court rightly refused to limit in advance the scope of petitioner's cross-examination. The Constitution does not require that courts extend to defendants the benefits of remaining silent and the benefits of testifying, at the same time. Further, it affirmatively appears that the jury commissioners of Dallas County, Alabama, honestly and conscientiously carried out their duties in compiling jury lists. There is no systematic

exclusion of Negroes shown. The Supreme Court of Alabama is due to be affirmed.

Respectfully submitted,

---

**JOHN PATTERSON**

*Attorney General*

---

**ROBERT STRAUB**

*Special Assistant Attorney  
General*

**Attorneys for Respondent.**

LIBRARY  
SUPREME COURT, U.S.

Office - Supreme Court, U.S.  
FILED  
FEB 5 1957  
JOHN T. FEY, Clerk

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1956

No. 53

WILLIAM EARL FIKES,

*Petitioner*

v.

STATE OF ALABAMA,

*Respondent.*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ALABAMA

PETITION OF RESPONDENT FOR REHEARING

JOHN PATTERSON  
*Attorney General of Alabama*

ROBERT STRAUB  
*Special Assistant*  
*Attorney General*  
*Judicial Building*  
*Montgomery, Alabama*

Counsel for Respondent



## TABLE OF CONTENTS

Petition.....	1
Statement Of The Case.....	1
The Question Presented.....	2
Brief And Argument.....	2
Certificate.....	8

## TABLE OF CASES CITED

<b>Brown v. Allen</b> , 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397.....	4, 5
<b>Gallegos v. Nebraska</b> , 342 U. S. 55, 96 L. Ed. 86, 72 S. Ct. 141.....	4, 5
<b>Ingram v. State</b> , 34 Ala. App. 597, 42 So. 2d 30.....	5
<b>Johnson v. Pennsylvania</b> , 340 U. S. 881, 95 L. Ed. 640.....	5
<b>Lisbena v. California</b> , 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280.....	5
<b>Stein v. New York</b> , 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077.....	5
<b>Turner v. Pennsylvania</b> , 338 U. S. 62, 93 L. Ed. 1810.....	5, 6
<b>Watts v. Indiana</b> , 338 U. S. 49, 93 L. Ed. 1081, 69 S. Ct. 1347.....	5, 6

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1956

**No. 53**

**WILLIAM EARL FIKES,**

*Petitioner*

v.

**STATE OF ALABAMA,**

*Respondent.*

**ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ALABAMA  
PETITION FOR REHEARING**

Now comes the respondent in the above-styled cause and respectfully applies to this Court for a rehearing and reconsideration of its decision of January 14, 1957, reversing the judgment and decision of the Supreme Court of Alabama.

**STATEMENT OF THE CASE**

The petitioner was tried and convicted in the Circuit Court of Dallas County, Alabama, under an indictment charging the offense of burglary in the first degree (Title 14, Section 85, Code of Alabama 1940). The trial was reviewed by the Supreme Court of Alabama, which affirmed the judgment of conviction and the sentence imposed. (**William Earl Fikes v. State of Alabama**, 81 So. 2d 303.) On November 19, 1955, the petitioner filed with the Supreme Court of the United States his petition for writ of certiorari directed to the Supreme Court of

Alabama. The Supreme Court of the United States granted certiorari (**William Earl Fikes v. State of Alabama**, 350 U. S. 993). The case was presented on oral argument on December 6, 1956 and the opinion announced January 14, 1957.

### **THE QUESTION PRESENTED**

Do the facts presented, relating to the confession "shock the conscience" to the degree necessary for a finding that the petitioner's rights under the Fourteenth Amendment to the Constitution were violated?

### **BRIEF AND ARGUMENT**

We earnestly submit that the facts of the instant case do not warrant reversal under the law as previously declared by this Honorable Court. In this connection we would respectfully point out certain facts, mentioned in the opinion which we deem worthy of elaboration.

The court alludes to the testimony of three psychiatrists (Op. p. 3). It should be pointed out that these witnesses talked to the petitioner on only one occasion for a period of two hours and obtained his history from the petitioner himself and a brief conversation with his father (R. pp. 286, 291, 294). It should also be pointed out that petitioner had held a regular job as a filling station attendant, dealing with the public generally for several months prior to his arrest.

This Honorable Court further says, "We do not criticize the decision to remove the prisoner before

any possibility of violence might mature, but petitioner's location and the conditions of his incarceration are facts to be weighed in connection with the issue before us." (Op. p. 6.)

Are Alabama authorities, indeed the authorities of any sovereign state, to have their actions in promptly moving to safeguard their prisoners, interpreted as an attempt to coerce a confession?

On page five of the Opinion the Court finds that a lawyer who came to the prison to see the prisoner was turned away. We would respectfully point out that the lawyer admitted that he had not been retained to represent the petitioner (R. p. 324). The prison officials testified that it was not their practice to permit the solicitation of business inside the prison (R. p. 331).

The Court then holds as follows:

"... Standing alone, the State's evidence establishes that the confessions in the present case were not voluntary within the meaning of the decisions of this Court.

"Here the prisoner was an uneducated Negro, certainly of low mentality, if not mentally ill. He was first arrested by civilians, lodged in jail, and then removed to a state prison far from his home. We do not criticize the decision to remove the prisoner before any possibility of violence might mature, but petitioner's location and the conditions of his incarceration are facts to be weighed in connection with the issue before us. For a period of a week, he was kept in isolation, except for sessions of questioning. He saw no friend or

relative. Both his father and a lawyer were barred in attempts to see him. The protections to be afforded to a prisoner upon preliminary hearing were denied him, contrary to the law of Alabama. He was questioned for several hours at a time over the course of five days preceding the first confession, and again interrogated at length before the written confession was secured.

"There is no evidence of physical brutality, and particular elements that were present in other cases in which this Court ruled that a confession was coerced do not appear here. On the other hand, some of the elements in this case were not present in all of the prior cases. . . ."

Should illiteracy bring the Fourteenth Amendment into play? Such was not the case in **Brown v. Allen**, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397, or **Gallegos v. Nebraska**, 342 U. S. 55, 96 L. Ed. 86, 72 S. Ct. 141, where both defendants were illiterate.

The arrest by civilians and the removal to the State prison cannot be said to violate petitioner's rights under the Fourteenth Amendment. Arrests by private persons are permitted under the provisions of Title 15, Section 158, Code of Alabama 1940, which statute has not been attacked, and as has been pointed out, the removal to the State prison was for the petitioner's own safety.

The isolation of the petitioner was customary in cases of prisoners held for other authorities (R. p. 324) and certainly detention is not sufficient to render a confession involuntary under the Four-



teenth Amendment. **Brown v. Allen**, *supra*. No deliberate attempt to keep petitioner from seeing friends or relatives is present here as in **Watts v. Indiana**, 338 U. S. 49, 93 L. Ed. 1081, 69 S. Ct. 1347. In fact he was permitted to see those persons he requested.

The failure to take the petitioner before a magistrate is not of itself sufficient to vitiate the confession. See **Ingram v. State**, 34 Ala. App. 597, 42 So. 2d 30; **Stein v. New York**, 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077. We would also call this Honorable Court's attention to the fact that although no preliminary hearing was held, there was judicial knowledge of petitioner's arrest (R. p. 210).

Finally, the interrogation was not sufficient to render the confession involuntary. See **Gallegos v. Nebraska**, *supra*, and **Lisbena v. California**, 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280.

The majority opinion then states that, "The totality of the circumstances that preceded the confessions in this case goes beyond the allowable limits.", and cites **Turner v. Pennsylvania**, 338 U. S. 62, 93 L. Ed. 1810, and **Johnson v. Pennsylvania**, 340 U. S. 881, 95 L. Ed. 640.

Where is the relay technique which was so extensively used in **Turner**, *supra*? It is not present here. Where is the failure to advise petitioner of his rights? He was so advised in the instant case. Where is the avowed purpose to hold incommunicado until a statement is made? Here he was permitted to see those he wanted. And finally where is the false representation that others had informed upon him? All

these elements were present in the **Turner** case, *supra*. **Johnson v. Pennsylvania**, *supra*, was a case growing out of the same crime and the Supreme Court of the United States reversed the Supreme Court of Pennsylvania without a hearing.

There is presented here a set of facts which at most might raise a question as to whether or not the confessions were coerced; no glaring misconduct, no physical abuse, no promises or threats. Does the fact, and we submit that it was not conclusively proved, that petitioner was "weak of will or mind" place these circumstances within the category of those that "shock the conscience" and, therefore, are within the jurisdiction of this Court under the Fourteenth Amendment? We respectfully submit that it does not. Under the majority opinion in this cause, the mere suggestion of low mentality or mental illness coupled with interrogation, would deny the use of a confession obtained through such interrogation. The State law enforcement officers are shorn of one more weapon in their efforts to combat crime. If the states may not detain and interrogate those suspected of crime, they are then faced with the unhappy prospect of permitting suspected criminals, whether weak willed or strong, to roam at will and continue their criminal activities. The rights of an accused must be protected, but society also has a right to protection.

We are quick to agree that a confession obtained through the use of threats, abuse, promises, or other forms of coercion should not be permitted in evidence. But where, as here, there were no

threats, no promises, and an absolute absence of any form of physical abuse, we cannot agree that the Fourteenth Amendment has been violated.

We submit that never before has a combination of circumstances so lacking in condemned conduct, been held to warrant the Supreme Court of the United States to substitute its judgment for that of the trial court, which saw and heard the witnesses, and for that of the Supreme Court of Alabama, that so carefully reviewed this case, and to assert its jurisdiction in reversing the appellate court of a sovereign state in the ordinary and regular prosecution of crime. We submit that the facts here do not "shock the conscience" or present a case of denial of due process.

We respectfully ask this Honorable Court to reconsider its Opinion of January 14, 1957, and to uphold the Supreme Court of Alabama.

Respectfully submitted,

JOHN PATTERSON  
Attorney General of Alabama

---

ROBERT STRAUB  
Special Assistant Attorney  
General of Alabama

COUNSEL FOR  
RESPONDENT

**CERTIFICATE OF SERVICE**

I, Robert Straub, one of the attorneys for the respondent, The State of Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the       day of February, 1957, I served copies of the foregoing petition for rehearing on Peter A. Hall, 1630 Fourth Avenue, North, Birmingham, Alabama, by placing a copy in a duly addressed envelope, with first class postage prepaid, in the United States Post Office at Montgomery, Alabama, and on Jack Greenberg, 107 West 43rd Street, New York 36, New York, by placing a copy in a duly addressed envelope, with Air Mail postage prepaid, in the United States Post Office at Montgomery, Alabama:

I further certify that this petition for rehearing is presented in good faith and not for delay.

---

**ROBERT STRAUB**

Special Assistant Attorney  
General, State of Alabama  
Judicial Building  
Montgomery, Alabama